

STATE OF CALIFORNIA

Final Report of the
**SPECIAL STUDY COMMISSION
ON NARCOTICS**



SACRAMENTO, CALIFORNIA

June, 1961

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ON NARCOTICS**

HARRY M. KIMBALL, *Chairman*

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SACRAMENTO, CALIFORNIA

June, 1961

LETTER OF TRANSMITTAL

STATE BOARD OF CORRECTIONS

July 12, 1961

EDMUND G. BROWN
Governor of California

THE HONORABLE GLENN M. ANDERSON
President of the Senate

THE HONORABLE RALPH M. BROWN
Speaker of the Assembly

On behalf of the Board of Corrections, I have the honor to transmit in accord with Section 6028.3 of the Penal Code, the Final Report of the Special Study Commission on Narcotics. This Final Report includes two Interim Reports which were previously transmitted.

The Board commends the Commission for its diligent and conscientious study of this complex, controversial field.

The Board also recognizes that in view of the necessarily short life of the Commission and the nature and urgency of its mission, it could not be expected to go deeply into every conceivable facet of the problem.

The Board hopes that the research authorized under Senate Bill 81 will fill some of the existing gaps in our knowledge and help us better to come to grips with the problem.

In particular, we need to know much more about the dynamics of drug addiction. Why do some people use narcotics? In what respects do they differ from other persons with like problems from similar environments? Obviously such information is highly important in the prevention and treatment of addiction.

We must learn more effective treatment methods. Present methods are largely focused on control. This focus on control, while realistic, should be accompanied by determined efforts to discover ways to cure those now afflicted with addiction and to immunize others against it.

Finally, the Board urges all segments of law enforcement—police, prosecutors, judges, probation officers, correctional workers, term-fixing and paroling officials—to work together with cooperation and mutual understanding in combating the narcotics problem.

Respectfully submitted,

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State Board of Corrections

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LETTER OF TRANSMITTAL

STATE OF CALIFORNIA
SPECIAL STUDY COMMISSION ON NARCOTICS
June 29, 1961

Honorable Edmund G. Brown
Governor of the State of California
State Capitol, Sacramento, California

DEAR GOVERNOR BROWN: The Special Study Commission on Narcotics submits herewith, its Report as requested by you in your Executive Order of March 22, 1960. This Report consists of three parts: The first Interim Report (December, 1960), The Special Interim Report on Dangerous Drugs (June 2, 1961), and a final section dated June 30, 1961, which completes the work of the Commission.

The first Interim Report contains the Commission's findings and recommendations concerning punishment for narcotics law violations, treatment for narcotics addiction, and a relaxation of the evidentiary rules with special emphasis on the problem of protecting the identity of police informants in obtaining search warrants. The Commission was extremely pleased to note that these recommendations were adopted as part of your legislative program on narcotics. The Regan-Dills Act signed into law by you on May 4, 1961, incorporates the Commission's recommendations on punishment. Senate Bill 81, which was passed by the Legislature and has already been signed into law by you, contains the Commission's recommendations concerning the treatment of narcotics addicts by compulsory hospitalization followed by a long period of mandatory outpatient treatment, and close supervision and control to detect a return to the use of narcotics.

The Commission recommended that an increase in monies be given to the State Bureau of Narcotics Enforcement for the purpose of purchasing evidence and the employment of operators to obtain evidence (see Recommendation No. 15 of the Interim Report). With the support of the Governor's Office, such funds have been appropriated by the Legislature.

The Commission pointed out the dangers inherent in the failure of law enforcement officers in California to use search warrants. The recent decision of the United States Supreme Court in *Mapp v. Ohio*, (overruling *Wolf v. Colorado*), prohibits the use of illegally obtained evidence in any state court, makes it essential that law enforcement officials follow the Commission's recommendations as to the use of search warrants.

The Commission recommended in its first Interim Report of December, 1960, that there should be no requirement that the identity of an informer be disclosed in order to obtain a search warrant issued pursuant to information from a confidential informer (see Recommendation No. 18 of the first Interim Report). On May 1, 1961, the Supreme

Court of California ruled that "where a search is made pursuant to a warrant valid on its face, the prosecution is not required to reveal the identity of the informer in order to establish the legality of the search and the admissibility of the evidence obtained as a result of it." (*People v. Keener*, 55 A.C. 719). The language of the Supreme Court in the Keener case closely parallels the arguments advanced by the Commission in support of its Recommendation No. 18.

Part II of the Report contains the Special Interim Report on Dangerous Drugs submitted to you on June 2, 1961. In this Special Interim Report, the Commission sounds an urgent warning as to the serious consequences involved in the use of the dangerous drugs. The recommendations contained in this Special Interim Report were based on the evidence submitted to the Commission by the California Board of Pharmacy, The Federal Food and Drug Administration, and representatives of state and local law enforcement agencies. The Commission believes that there is a great need for federal and state legislation to establish enforceable inventory controls to insure that these drugs do not enter the illegal market and end up in the hands of innocent school children and adults who are unaware that some of these drugs are habit forming and can cause irreparable damage to body tissue or even death. Serious consideration should be given to increasing the punishment for violations of the laws prohibiting the illegal sale or possession of dangerous drugs. In addition, the Commission has recommended that legislation be enacted prohibiting the illegal possession of such drugs for sale and making such possession punishable as a felony.

In Part III, the final section of the report sets forth the Commission's recommendations on Education and Prevention. The Commission has found that teachers throughout the State of California are inadequately prepared to teach the subjects of addiction to narcotics, and dangerous drugs. In addition, there is a dearth of resource materials to aid the classroom teacher in presenting this subject matter. The manual for teachers on narcotics distributed by the State of California was published in 1952 and is now quite out of date. The Commission was advised that there is no suitable film on narcotics for classroom use. No printed material on addiction to narcotics and dangerous drugs is published by the State of California for distribution to students, parents, and the general public.

The Commission was advised that addiction to narcotics and dangerous drugs can be prevented if the addiction-prone personality can be identified early in his school career in time to concentrate the resources of the community in an effort to save such persons from becoming addicts. The Commission has learned that waiting until the junior high school age is too late to begin a prevention program. Detection of children who will later exhibit anti-social behavior, including addiction, should be accomplished in the primary grades.

The Commission has recommended that a research study be conducted to find out the common traits and patterns of behavior exhibited by addicts prior to their first use of narcotics. This research can be accomplished by conducting a follow-up study of all the pupils in the primary

grades in schools in areas of a high incidence of narcotics. The case history of each student who subsequently becomes an addict can be compared with the non-addicts to find out the characteristics which are present in each group.

The Commission is hopeful that the recommendations contained in its Report and the results of our study will be of assistance to you and to the Legislature in arriving at solutions to the problem of addiction to narcotics and dangerous drugs.

Respectfully submitted,

HARRY M. KIMBALL, *Chairman*

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PART I

NARCOTICS

DECEMBER, 1960

STATE OF CALIFORNIA
SPECIAL STUDY COMMISSION ON NARCOTICS
December 3, 1960

EDMUND G. BROWN
Governor of the State of California
State Capitol, Sacramento, California

Re: Interim Report

DEAR GOVERNOR BROWN:

On March 22, 1960 the Special Study Commission on Narcotics was created by your Executive Order to study, evaluate, and make recommendations concerning the adequacy of our present laws relating to the illegal traffic in narcotics in California.

On May 4, 1960 the Commission was requested to submit a special progress report to you in December containing any recommendations agreed upon up to that time which might be appropriate for submission to the Legislature for its 1961 session.

In preparing the recommendations contained in this progress report, the Commission was fortunate to have the benefit of the experience and the expert opinion of many persons whom it was felt were well informed in this field including judges, state, federal and local officials, and professional people. In addition, the Commission examined the records and reports of various state and local agencies concerned with the narcotics problem.

From the Commission's study to this date certain problems stand out which would appear to demand immediate consideration.

Despite efforts to control the narcotics problem by law enforcement agencies the number of arrests for narcotics law violations continues to soar each year. Illegal narcotics continue to flow into California in increasing amounts from outside our borders. Controlling the smuggling of narcotics and negotiating cooperative agreements with foreign nations to eliminate the source of narcotics is a federal responsibility.

The Commission found in its study that many persons in California believe that there are a few large scale non-addicted peddlers who have control of the narcotics traffic in California. These persons view the addict-peddler as a "victim of the traffic" who should receive leniency. This sympathetic attitude persists in the face of statistical evidence that the addict is usually a criminal problem before he becomes addicted. Conversely, they state the major non-addict peddler should be treated harshly.

The Commission has found no evidence in its study that there are large scale narcotics syndicates in California controlled by a mysterious man in the castle. The narcotics traffic in California is carried on almost entirely by addict peddlers operating independently, each busily engaged in promoting new business for himself.

Addict peddlers constitute the greatest menace to our youth in California because of their vast number and because they are more difficult

to rehabilitate than the non-addict peddler. When the addict peddler is removed from the streets of California, the narcotics traffic in this state will be substantially eliminated. In accomplishing this, there should be no distinction with respect to punishment between the addicted peddler and the non-addicted peddler.

The Commission has found that the Adult Authority is paroling almost all narcotics peddlers in less than the minimum term prescribed by law. At least 90% of the narcotics peddlers sentenced to prison who had prior narcotics convictions serve less than one-half of the minimum term prescribed by law.

The Commission has learned in its study that the Adult Authority frequently does not have in its possession sufficient information concerning the background of narcotics offenders prior to parole action.

The Commission has found that there is no existing prevention program for the elimination of the causes of addiction or for the identification and treatment of the addiction-prone personality before he becomes an addict. For example, the Youth Authority has no special program for the treatment of youthful offenders with prior narcotics involvement.

The Commission has also learned that the facilities in California for the treatment of narcotics addicts are insufficient and ineffectual. For example, in 1959 only 168 narcotics users were treated in state hospitals for addiction. Parents, friends and law enforcement officers seeking civil commitment for an addict in our state hospitals are turned away by the courts. The addict is left to roam the streets, building up his narcotics habit until he becomes a serious police problem.

In our attached recommendations the Commission endeavors to set forth several suggestions for legislation to aid the peace officer in combating the narcotics problem.

The Commission has prepared this interim progress report pursuant to your request and in the hope that the recommendations contained herein and the results of our study will be of some assistance to you in preparing your legislative program for 1961.

Respectfully submitted,

HARRY M. KIMBALL, *Chairman*
WALTER S. BINNS
A. E. JANSEN
JOHN E. STORER
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RECOMMENDATIONS

The Special Study Commission on Narcotics respectfully submits the following recommendations:

1. That 1961 be declared "Fight Narcotics Year" and the assistance of all business, labor, civic, community, fraternal and religious organizations should be enlisted in a massive statewide educational campaign, directed at the prevention of narcotics addiction, the encouragement of unanimous public support of law enforcement in its all-out fight against narcotics peddlers and smugglers, and the necessity for treating narcotics peddling as a serious offense whether committed by an addict or a non-addict.

2. That a request be made by the State of California to President-elect Kennedy to call a White House Conference on Narcotics so that representatives of each state having a serious narcotics problem may offer proof that immediate federal measures are an absolute necessity to control the smuggling of narcotics into the United States.

3. That the Bureau of Narcotic Enforcement should continue its efforts to obtain better cooperation from Mexican authorities in curbing the illegal traffic in narcotics across our common border.

4. That steps should be taken leading toward making adequate facilities available so that every known addict may be eventually removed from the community under a voluntary or involuntary civil court commitment to a state hospital for quarantine, withdrawal from the physiological use of narcotics, and rehabilitative treatment. An addict so committed should not be permitted to leave the hospital on parole or otherwise until the court determines that such release would be in the best interests of the person and of society. Further, no addict should be released from the state hospital until he agrees to recommitment if he should become readdicted or if he fails to comply with a court order to submit to out-patient psychiatric treatment, supervision and control—including the use of an anti-narcotic test for re-use or re-addiction.

It is the opinion of the Commission that proposals for out-patient clinics for the dispensing of narcotic drugs to addicts are unsound.

Support should be given to federal legislation similar to that sponsored by Senator Jacob Javitz and Congressman Victor L. Anfuso of New York in the 1960 Congressional Session which would require the federal government to pay one-half the cost per patient under civil commitment in a state hospital with facilities for the treatment of narcotics addicts.

In considering the added costs of such a treatment program, it should be noted that over 15 million dollars is spent yearly in prosecuting and housing narcotics law violators in California.¹

5. That the Youth Authority be provided with sufficient funds to set up a special program for the treatment and rehabilitation of its

¹ Narcotics in California, a Report by the Board of Corrections (1959), page 3.

2,480 wards who have been identified as having been involved in the use of narcotics. A special prevention program should be instituted immediately for the 1,838 wards who have been identified as having "experimented" with marijuana, since experience has shown that use of marijuana usually precedes addiction to heroin.

6. That the penalty for furnishing narcotics to a minor should be increased as to any person over 21 years of age at the time of the commission of this crime to *not less* than ten years for a first offense and *not less* than fifteen years for a person who has previously been convicted of a narcotics law violation.

7. That Health and Safety Code sections 11501 and 11531 be amended to eliminate county jail as an alternative sentence for the crime of selling narcotics. The Commission believes that this crime is far too serious to be designated as a misdemeanor at the discretion of the court. However, to provide for cases involving *exceptional* mitigating circumstances, the Commission is of the opinion that the court should retain the discretionary power to suspend a prison sentence as to a person convicted of peddling narcotics to an adult, where the seller has no prior narcotics convictions.

8. That legislation be enacted to prohibit the possession of narcotics for sale. This offense should be punishable by imprisonment in the state prison for from three years to life. The court should have the discretionary power to suspend sentence and grant probation in exceptional cases. Any person convicted of this offense who has previously been convicted of a narcotics violation shall serve not less than ten years in prison. The crime of possession for sale has been adopted in New York and Ohio.

9. That legislation be enacted to amend Penal Code section 3049 to provide that no person convicted of a violation of the State Narcotics Act shall be eligible for parole until he has served the minimum term prescribed by law. Under the present law a narcotics peddler sentenced to serve from five years to life is eligible for parole in one year and eight months.

At least ninety percent of the narcotics peddlers sentenced to prison are being released in less than the minimum term prescribed by law. At least ninety percent of the narcotics peddlers with a prior conviction of a narcotics violation are being released in less than half of the minimum term prescribed by law.

The Commission believes the indeterminate sentence law should not be changed. However, every prisoner convicted of a narcotics law violation should serve the minimum term prescribed by law for that crime before he becomes eligible for parole or for the application of the indeterminate sentence law. The vast majority of the law enforcement officers interviewed by the Commission felt that our present prison penalties for narcotics law violations would be adequate if each prisoner served the minimum term prescribe by law.

10. That legislation be enacted to require every law enforcement agency responsible for the arrest and prosecution of a narcotics law violator to furnish the Adult Authority with a special report concerning the entire criminal record of such person including the extent and seriousness of his involvement in the narcotics traffic in order to assist the Adult Authority in fixing a proper prison term.

11. That all law enforcement agencies be required to prepare a special report for the court and the probation department setting forth a history of the defendant's involvement in the narcotics traffic and his prior record. The probation department in each county should also be urged to actively seek out information from the arresting agency as to the true nature of a defendant's criminal involvement.

12. That all prosecuting attorneys be urged to participate actively in probation and sentence hearings. A prosecuting attorney should correct errors in the probation report or misstatements by a defense attorney. He should also make certain that the court is made aware of the true nature and extent of a defendant's involvement in the narcotics traffic.

13. That no distinction be made by the courts or the Adult Authority between an addict-peddler and a non-addict peddler. An addict-peddler is just as great a menace to society as is a non-addict peddler. Each preys on the weakness of others in order to make huge profits from a small investment.

14. That the Adult Authority and the courts reject the "quantitative test" for measuring the true nature of a peddler's involvement in the narcotics traffic. It should be recognized that peace officers purchasing narcotics as evidence for law enforcement purposes, because of budgetary limitations must conserve these funds, and therefore, the quantity purchased is not a proper measure of culpability.

15. That the Bureau of Narcotic Enforcement be given an increased appropriation in an amount not less than \$100,000 for the obtaining and purchase of narcotics from peddlers to be used as evidence, and for the compensation of undercover operators. It is further urged that all city councils and boards of supervisors make adequate funds available to their law enforcement organizations for the same purpose.

16. That legislation be enacted appropriating sufficient funds so that a suitable state agency such as the Attorney General's Office or the Judicial Council may prepare and distribute without cost to all California judges a weekly digest of all appellate decisions dealing with narcotics cases and the *Exclusionary Rule* so that each judge may have quick, accessible, reference material in this important field and to foster conformity in the rulings of the trial courts.

17. That legislation be enacted to provide that evidence obtained by means of a search warrant issued by a magistrate based on probable cause shall not be excluded in any criminal proceeding.

18. That legislation be enacted to provide that a finding by a magistrate that probable cause exists for the issuance of a search warrant may be based on information obtained from an undisclosed informant *whose reliability as an informant is attested to by the affidavit of the officer seeking the warrant*. Such legislation should also provide that the officer shall not be required to disclose the name of such an informant in order to obtain a search warrant, and that evidence seized by means of a search warrant issued upon probable cause based on information from an undisclosed informant should be admissible in any criminal proceeding and shall not be excluded on the grounds that it was obtained by means of an unreasonable search and seizure.

These preceding two recommendations concerning the search warrant will afford law enforcement some relief from the restrictions of the *Cahan* and *Priestly* cases which have hampered law enforcement's

efforts to curb the narcotics problem. (In the first half of 1960, arrests for narcotics violations in California were up 18.5% while felony informations filed in the Superior Court after a preliminary hearing were down 5.3%). At the same time adequate protection will be afforded the citizen from improper police action since a magistrate must be satisfied that probable cause exists before he will issue a search warrant.

It should be noted that this recommendation would *not* preclude any defendant from obtaining the name of an informant *on the issue of guilt or innocence* upon a proper showing or an offer of proof that he had been "framed" or that the evidence had been "planted" or that he is the victim of a mistake in identification.

19. That legislation should be enacted amending Penal Code section 1532 to provide that a search warrant issued on probable cause based on information and belief may be served at any time of the day *or night*.

At the present time, an officer may search a dwelling house in the nighttime, without a search warrant, as an incident to a lawful arrest based on information from a reliable informer. However, he cannot serve a search warrant in the nighttime based on such information.

20. The Commission strongly urges greater use of search warrants by peace officers and that all law enforcement agencies in California should adopt procedures similar to those used in Alameda and San Diego Counties to simplify the paper work necessary for the issuance of a search warrant to avoid delay when time is of the essence.

21. That legislation be enacted to provide that narcotics and evidence of narcotics offenses seized *outside the curtilage* of any dwelling house, apartment, or other place of temporary or permanent abode, which is otherwise relevant, competent, and material, shall not be excluded in any criminal proceeding on the grounds that such evidence was obtained by means of an unreasonable search and seizure.

22. That legislation legalizing wire-tapping should not be adopted by the State of California. Such laws would involve serious constitutional questions. Even if Constitutional, the concept of wire-tapping is repugnant to American concepts of freedom of thought and the right to privacy.

The Commission will particularly continue its studies concerning the adequacy of our present laws relative to treatment, control, prevention and education and their effect upon the illegal traffic in narcotics in California.

Additional recommendations on these and other subjects will be contained in its final report to be submitted before the expiration date of this Commission on June 30, 1961.

CONTROL OF NARCOTICS SOURCES A FEDERAL RESPONSIBILITY

One hundred percent of the heroin seized in California is manufactured outside this State.

Over ninety percent of the marijuana found in this state is illegally smuggled across the border. Over seventy percent of the heroin which reaches our state is raised and processed from opium poppy fields in Mexico. Mexico is also the source of almost all of our marijuana.

It is readily apparent from these statistics that regardless of what recommendations are made by this Commission or what new enforcement efforts are initiated locally or statewide, California cannot eliminate the menace of narcotics alone.

The Federal government can prevent narcotics from crossing our borders and from being smuggled through our ports of entry by increasing the number of Customs Officers. Only the President and the State Department can negotiate treaties or agreements by which this country and Mexico can work out a program to wipe out the opium fields, the heroin factories, and the cultivation of marijuana.

The Commission feels that a White House Conference is essential in order that representatives of those states having the most serious narcotics problem may appear to present evidence that this matter is one which is national in scope requiring immediate federal action. Narcotics are shipped daily in foreign and interstate commerce to all parts of the United States. Narcotics addicts can be found in every major city of the country.

The Federal government must act to increase the staff of the United States Customs Service and develop new techniques in order to prevent smuggling. New agreements should be entered into with Mexico to keep Mexican Nationals from producing narcotics for export to the United States and citizens of the United States from entering Mexico to tempt Mexican citizens to violate their own anti-narcotics laws by offers of large sums of money. Without the American market for the product of the opium poppy and the marijuana cigarette, these plants would be worthless weeds.

HOSPITAL TREATMENT FOR NARCOTICS ADDICTS

Under California law² a narcotics addict may receive treatment in certain specified state hospitals under a civil court commitment. Such commitment proceedings can be instituted by an affidavit which alleges that a person sought to be committed is a narcotics addict. Upon the filing of such an affidavit, the court is empowered to issue a warrant to a peace officer directing that such person be apprehended and taken to court for a hearing. The person sought to be committed as a narcotics addict is entitled to present a defense to this charge, and produce witnesses on his behalf. The judge may cause witnesses to be summoned and examined before him. The court must appoint two medical examiners who must hear the testimony of all witnesses, physically examine the alleged narcotics addict and then testify before the judge as to the result of the examination. The alleged narcotic addict shall be present at the hearing and is entitled to be represented by counsel.

There is no method under the present law for a narcotics addict who is voluntarily seeking commitment to waive the hearing required under Welfare and Institutions Code section 5353 in order to receive immediate hospital care.

If evidence is presented that the alleged addict is of bad repute or bad character apart from his addiction *and* that if committed he will not be benefited by treatment, the judge cannot commit such person to a state hospital. Apparently if a person is of bad repute but will benefit from treatment, he can be committed. Also, a person of good repute who may not benefit from treatment can, nevertheless, be committed. No test or criterion is set forth in the statute as to how it can be determined prospectively who will not benefit from treatment.

An adult who is committed as an addict may be paroled by the Superintendent of a state hospital at the expiration of three months. Such parole can be granted without returning the addict to court for a determination if such release is in the best interests of the addict or of society. In addition, the superintendent may discharge any person *after three months* when he is satisfied the addict will not receive substantial benefit from further hospital treatment. Such discharge may be granted without returning the addict to court to determine if such discharge is in the best interests of the addict or of society.

A girl or boy charged under the juvenile court law, or an adult charged with a crime before any court, may have proceedings against him adjourned or the sentence suspended when it appears to the court that such person is a drug addict, so that proceedings may be taken for a civil commitment.³ If the person is found not to be an addict, the court may proceed with the criminal trial or impose sentence. If the person is committed, he cannot be released in less than three months. After three months, the Director of Institutions may certify to the court that the person has been sufficiently treated or give any other adequate

reason for discharge, after which the court may order the discharge of the person so committed or order his return to await the further action of the court.

Although the law clearly provides that *any addict* may be committed to a state hospital for treatment after a hearing, the Department of Mental Hygiene is presently accepting only persons who voluntarily request such a commitment. All requests for civil commitments from law enforcement officers, relatives, or other persons interested in trying to help an addict receive treatment are refused.

In Los Angeles County, an addict will not be accepted for commitment unless he signs an affidavit admitting he is a narcotics addict. An arrest warrant is then prepared and the addict is sent to the county hospital. There he is examined by two psychiatrists who determine if the addict is amenable to treatment. The addict is screened through the records of the Bureau of Narcotics Enforcement to determine if there are any criminal proceedings pending. Commitment by the court is based upon the affidavit and the psychiatrist's report. The addict is on his way to the state hospital two days after he voluntarily submits himself for commitment.

Under our present law there is no provision for the return of the addict to court prior to his release on parole so that the court may set the terms and conditions of such parole. Nor is there any requirement that such person be returned to court for discharge even where discharge is recommended prior to two years.

There is no provision spelled out under our present laws for any mandatory follow-up supervision or control of the civilly committed addict including the use of some anti-narcotics test. As pointed out in the Report of the Subcommittee on Narcotics and Dangerous Drugs Assembly Interim Committee on Public Health at page 28:

"There is not one place in the State with an integrated program of hospitalization, psychiatric care and rehabilitation for addicts. There is an almost complete lack of follow-up care or outpatient supervision on the community level to assist the addict once he is discharged or released from state or federal hospitals. The parole supervision over those released from state prisons or county jails is also inadequate. This failure can nullify any benefits the addict may have received while in any of these institutions."

The State of California has nine hospitals for the mentally ill which also will accept court committed narcotics drug addicts for treatment. Due to a lack of personnel and facilities very few addicts receive treatment under civil commitment. Last year only 42 beds were used in all of our state hospitals for the treatment of addicts. A total of 168 addicts were accepted for treatment. Each was released in 90 days. California does not have a special hospital which devotes itself exclusively to the care and treatment of narcotics addicts. The Commission was informed by Dr. Daniel Blain the Director of the Department of Mental Hygiene, that narcotics addicts are placed in the same wards or wings with the senile, the alcoholic, the psychotic and the mentally ill. There are no separate facilities for narcotics addicts in any of these hospitals. (See Table No. 1, Appendix p. 51).

² Welfare and Institutions Code sections 5350-5361.

³ Welfare and Institutions Code section 5360.

Dr. Blain and his staff told the Commission that there would be advantages to having a separate hospital facility for narcotic addicts. With such separate facilities, special attention could be given to developing treatment techniques for the addict.

The Commission was advised by Dr. Blain that it would be no problem at all to set aside special wings in existing state hospitals for the treatment of narcotics addicts.

Any plan to set up special treatment facilities for narcotic addicts should be coupled with a long-range research program to study the treatment techniques used and recommend improvement. Dr. Blain advised the Commission that federal grants were available to finance such a research program.

Dr. Blain stated that he would be willing to accept more court committed narcotics addicts, including those who were not voluntarily self-committed, if there was mandatory follow-up supervision and control for a long period of time. Dr. Blain said the great weakness in the treatment program of the Department of Mental Hygiene was the lack of funds and personnel for adequate follow-up treatment, supervision and control after the narcotic addict leaves the hospital.

At the present time, narcotics addicts committed for three months to two years are released in three months. A few of these addicts find their way to out-patient clinics, but the vast majority are lost track of after they leave the hospital.

Dr. Blain informed the Commission that he was very optimistic about the probabilities of successful treatment for narcotics addicts if coupled with research, and follow-up supervision and control. As an example of success in the treatment of addiction, Dr. Blain pointed out that over 90% of the physician-addict's disciplined by the California State Medical Board have been cured of narcotics addiction. This rate of success is said to be due to the constant supervision exercised by the State Medical Board and the threat or fear of a permanent loss of the physician addict's license to practice medicine.

The Commission believes that the Department of Mental Hygiene has achieved some success in rehabilitating addicts despite many handicaps.

The Commission further believes that narcotics addiction should be treated as a public health problem. All known narcotics addicts without pending criminal charges should be quarantined in state hospitals for treatment and rehabilitation and to stop the spread of this contagion. Parents and law enforcement officers should be encouraged to seek hospitalization of all narcotics addicts immediately. Civil commitments of addicts should not be restricted to voluntary applications. Narcotics addicts should not be permitted to remain on the streets until they become a police problem.

The following recommendations would assist the Department of Mental Hygiene to institute an effective program of rehabilitation and treatment of all civilly committed narcotics addicts:

1. Separate hospital facilities should be provided for the treatment of all persons who are committed upon a civil proceeding as narcotics addicts.

2. Sufficient funds should be provided to insure an adequate number of beds and trained personnel to care for all persons committed as

addicts. (In the 1959-1960 fiscal year only 42 beds were made available in the entire state for the treatment of civilly committed addicts).

3. Sufficient funds should be provided for a research staff to study present treatment techniques and recommend improvements.

4. Adequate staff should be provided so as to insure close supervision and control of addicts after they have left the hospital.

5. Out-patient facilities for psychiatric care and for anti-narcotic tests should be provided. The disappointing lack of success in the rehabilitation of narcotics addicts at the federal hospital at Lexington, Kentucky is due to the lack of any follow-up treatment and mandatory supervision and control.

6. The courts should be required to accept affidavits filed by relatives, law enforcement officers, or other interested persons, seeking hospitalization of narcotics addicts through civil commitment. At the present time, all affidavits signed by relatives or any other interested persons are rejected. The courts will only accept voluntary commitments based on affidavits signed by the addicts themselves.

7. Legislation should be enacted to permit a narcotic addict seeking voluntary commitment to waive his rights to a hearing in order to expedite his hospitalization.

8. The addict should not be released from the hospital by the superintendent without a court order. (Welfare and Institutions Code section 5356). The addict should be returned to court when the superintendent believes that the addict is ready to return to the community so that the court may determine if immediate release would be in the best interests of the addict and of society, and so that the court may make appropriate orders to the addict concerning his responsibilities while on parole from the hospital.

9. Welfare and Institutions Code section 5355 should be amended to change the time for placement in a hospital from not less than three months nor more than two years so as to read: *not less than three months nor more than five years.*

This section should be amended to strike the entire second paragraph which now reads as follows:

"If satisfactory evidence is submitted to the trial judge showing that the person to be committed is of bad repute or bad character, apart from his habit for which the commitment is made, and that there is reasonable ground for believing that the person if committed will not be benefited by treatment, the judge shall not commit the person to a state hospital."

The Commission believes that all addicts who have no pending criminal proceedings against them should be committed to the state hospital for withdrawal from the use of narcotics and treatment, regardless of reputation.

The Commission also believes that any person placed in a hospital (for a minimum of three months) with adequate safeguards from escape, will at the very least, benefit from the fact that he has been withdrawn from the use of narcotics for that period of time and is no longer physiologically addicted. Society will benefit by having such a person out of the community so that he does not steal or commit other crimes to obtain money.

10. Any law enforcement officer should be authorized to take into custody a narcotic addict who has escaped from a state hospital and detain him until he has been returned to the hospital.

YOUTH AUTHORITY

Recently the Youth Authority published a survey of the number of wards involved in the use of narcotics.

Of the 14,246 Youth Authority wards on parole and in institutions as of May 31, 1960, 2,480 or 17.4 percent had been involved with such drugs as heroin, cocaine and marijuana.

Heroin involvement was found in 799 wards or 5.6 percent of the total, and marijuana involvement was found in 1,838 cases, or 12.9 percent of the total. However, of those involved with heroin, only 313 or approximately two percent of the total were addicted to heroin.

The Commission learned from its study of the Youth Authority that there is no existing special program for the treatment of wards who are former narcotics addicts or who had some experience with the use of narcotics within the various institutions it maintains.

Further, there is no existing special program for the supervision and control of parolees from the Youth Authority who have a history of narcotics involvement. The average caseload per parole agent in the Youth Authority is 72. These caseloads are made up of addicts and non-addicts.

The Youth Authority to date does not administer nalorphine or any other anti-narcotic to its parolees as a test for readdiction, nor are any of the facilities of the Narcotic Treatment-Control Project being utilized.

If a Youth Authority parolee returns to the use of narcotics, his parole agent must send the parolee to juvenile hall or the county jail to be held for a hearing for violation of parole. Instead, some Youth Authority parole agents who feel that confinement without any special treatment will not serve to cure addiction, permit the parolee, who is not otherwise in violation of his parole, to remain free in the hope that he will discontinue using narcotics by his own efforts. The Youth Authority does not have a program similar to that of the Department of Corrections which would permit the parole agent to immediately take a parolee who is using, to a Youth Authority institution for up to 90 days' special treatment for his addiction, without the necessity of action by the Youth Authority Board or revocation of parole.

The Commission believes that the Youth Authority should immediately set up a special program for the treatment and rehabilitation of its 2,480 wards who have been identified as having been involved with the use of narcotics. A Special Prevention Program should be instituted for the 1,838 wards who have "experimented" with marijuana, since experience with addicts has shown that use of marijuana usually precedes addiction to heroin.

DEPARTMENT OF CORRECTIONS—PRISONS

The Commission was concerned with studying the type of program offered by the Department of Corrections within its prison facilities for the treatment and rehabilitation of prisoners who were addicts prior to their incarceration. Some of the judges in the Los Angeles area advised the Commission that they had been told that there was a special program available at the California Medical Facility at Vacaville for the treatment of former narcotic addicts while in state prison. As a result of this belief that Vacaville had a treatment program for addicts, many defendants, appearing for probation and sentence charged with possession of heroin have been sentenced to the state prison with Vacaville recommended, because these judges felt that since there was no treatment of any kind offered in the county jail for addicts, it would be in the best interest of the defendant to sentence him to state prison.

The Commission was told by the presiding judge of the Superior Court of Los Angeles County, that after being told that there was a special program at Vacaville for the treatment of narcotics addicts, he made an investigation and discovered that there was no such program provided by the Department of Corrections. Mr. Fred Finsley, Chairman of the Adult Authority, informed this Commission that such a special program had been started at Vacaville, but it was later abandoned.

Most of the prisoners at Vacaville now receive the same type of program and supervision without regard to their history of addiction. Vacaville provides group therapy sessions. The membership of these group therapy sessions is not restricted to addicts.

Since Vacaville discontinued its special program there has been no special treatment program for the rehabilitation of narcotics addicts within the prisons operated by the Department of Corrections. Richard A. McGee, Director of the Department of Corrections, pointed out to the Commission that:

"The majority of narcotics offenders have had delinquency problems prior to their use of narcotics and to a considerable extent their programming is similar to that of other delinquents."

Mr. Finsley in referring to the treatment offered former addicts in California prisons commented, "I feel the treatment we do have available is not adequate."⁴

ADULT AUTHORITY

Under California's Indeterminate Sentence Law, the Adult Authority has the responsibility of fixing the term of a prisoner sentenced to the state prison for the violation of a felony. For example, a person sentenced to the state prison for the sale of narcotics which carries an indeterminate sentence of five years to life may have his prison term fixed at five, six or ten years. The prisoner must then serve the time fixed by the Adult Authority before he may be discharged.

The Adult Authority is also charged with the responsibility of determining whether a prisoner is eligible for release on parole. Under Penal

⁴ Report of Subcommittee on Narcotics and Dangerous Drugs, Assembly Interim Committee on Public Health, page 26.

Code section 3049, the Adult Authority may release a prisoner after he has served one-third of the minimum time prescribed by law. A person charged with the sale of heroin which is punishable by imprisonment for five years to life is eligible for release on parole back into the community in one year and eight months.

The Commission was informed that in determining eligibility for parole, the Adult Authority has before it a cumulative digest of all the available records received by the Department of Corrections concerning a prisoner and the evaluations of various clinical psychologists, sociologists and psychiatrists on the correctional staff as to the prisoner's adjustment to a prison environment. In addition, these records contain, when such are available, copies of police reports and recommendations from the superior court judge who presided over the prisoner's trial and the district attorney who served as prosecutor.

There have been many criticisms directed at the Adult Authority concerning its policy with reference to the paroling of narcotics law violators. These critics contend that narcotics law violators, including those with prior records of narcotics convictions, are being released into the community after only short stays in prison and after serving far less time than the minimum sentence called for by law. In addition, the Commission was told that our narcotics laws are being violated over and over again by the same persons at least in part due to the mild punishment meted out for crimes involving tremendous profits with very low risks.

A. Are narcotics law violators being released after short periods of time in confinement?

The punishment called for by the State Narcotics Act for violations of California's narcotics laws for those persons sentenced to the state prison is as follows:

- | | |
|---|------------------|
| 1. Possession of Narcotics (including marijuana)_____ | 1 - 10 years |
| with a prior conviction of a narcotics offense_____ | 2 - 20 years |
| 2. Sale of Narcotics (including marijuana)_____ | 5 years to life |
| with a prior conviction of narcotics_____ | 10 years to life |
| 3. Furnishing Narcotics to a Minor_____ | 5 years to life |
| with a prior conviction_____ | 10 years to life |

The Commission has found that in 1959 at least 90% of all narcotics peddlers were released before they served the minimum term prescribed by the law. At least 90% of the narcotics peddlers who had a prior conviction of a narcotics offense served less than one-half of the minimum term prescribed by law (from 10 years to life). (See Table 2, Appendix, p. 51). The median time served before release by the 181 narcotics peddlers who were sentenced from five years to life, who had no prior convictions in 1959 was two years and nine months. The prison term for this group ranged from two years to three years and nine months for the middle 80% of those released.

The 20 persons released in 1959 convicted of sale to a minor (sentenced to from five years to life) served a median time of two years and 9½ months. The prison terms for the middle 80% of this group ranged from *one year and 11 months* to three years and nine months.

55 persons convicted of sale with a prior conviction of narcotics (sentenced to from 10 years to life) served a median prison term of four years. The prison term for the middle 80% of this group ranged from three years and six months to four years and seven months.

It is interesting to note that the median prison term served for the sale of narcotics to a minor is only 10½ months more than the median time served by someone convicted of the mere possession of narcotics. (See Table 2, Appendix, p. 51).

The average time served by the 736 narcotics offenders released by the Adult Authority in 1959 was two years and five and one-half months. Prisoners who had no prior commitment served an average of 25.9 months. Prisoners with one prior prison commitment (or one or more jail or juvenile sentences) served an average less than two months longer or 27.8 months. Prisoners with two or more prison terms (or three or more jail terms or one prison plus a misdemeanor) served 32.1 months, or an average 6.2 months longer than a prisoner with no prior commitment record. It should be noted that out of a total of 736 narcotics law violators released in 1959, *only 81 had no prior commitment record*. (See Table 3, Appendix, p. 52).

Mr. Fred Finsley, Chairman of the Adult Authority, advised the Commission on June 29, 1960, that a guide had been prepared for the processing of applications for parole submitted by prisoners committed for narcotics law violations so that all the members of the Adult Authority would treat these narcotics offenders uniformly. Mr. Finsley stated the prison term suggested in this guide represented a slight increase from previous policy in fixing the length of time in prison. This guide was released on April 29, 1960. (See Table 4, Appendix p. 52).

It should be noted that this guide or policy statement does not set a minimum term for narcotics offenders. Each prisoner's application is to be evaluated on a "case by case" basis. According to this policy statement of the Adult Authority, the *quantity and type of narcotics involved is to be considered in fixing the term*. Also, the personal and emotional changes which may have occurred through the rehabilitative efforts of the Department of Corrections are to be considered. It would appear that an evaluation of all of these factors might result in release of a narcotics law violator sooner than the length of time in prison suggested by the guide.

The guide of April 29, 1960, excluded consideration of a prior conviction in fixing the time in prison unless such prior conviction resulted in a sentence to the state prison. Also, all marijuana offenses were specifically excluded from the suggested terms of imprisonment set forth in the guide.

On October 31, 1960, the Adult Authority issued a new policy statement concerning prison terms for narcotics law violators. The language concerning the exclusion of marijuana offenses was eliminated in this new policy statement. Also, prior convictions for narcotics offenses are to be considered where probation was granted.

By studying Table No. 7, which shows the median time served by narcotics offenders and Table No. 8, which shows the average time served, together with the new Adult Authority "guide" for fixing the prison terms for narcotics law violators, it is clear that the Adult

Authority is presently releasing and will continue to release narcotics peddlers prior to the minimum term prescribed by law (under Penal Code section 3049 which permits release on parole after one-third of the minimum term has been served).

B. Do narcotics law violators who are released on parole return to criminal activity and involvement with narcotics?

According to the Board of Corrections, almost 50% of the parolees without a history of narcotics addiction successfully complete three years of parole. However, approximately 66 $\frac{2}{3}$ % of the parolees who were addicts prior to entering prison fail on parole within three years and are returned to prison.⁵

A study of the parole success of those persons in the experimental group of the Department of Corrections' Narcotics Treatment-Control Project shows that 61% of the 121 parolees had indicated clear narcotic use or involvement in criminal conduct or a violation of parole within six months after being released from prison. Fifty-eight percent of these parolees indicated narcotics use, 10% indicated minimum use of narcotics (only one positive nalorphine test indicating use), 7% were merely suspected of having used narcotics, 25% indicated no use at all.

In addition, 17 percent of these "project" parolees were involved in criminal conduct other than using narcotics within the first six months.

On November 1, 1960, 153 persons were indicted by the Los Angeles County Grand Jury for sale of narcotics.

The following information was revealed after a check into the prior criminal record of this group:

1. The average number of prior arrests *per person* was 17 and the average number of prior narcotic arrests was five.
2. 59% of this group have had a prior narcotics conviction, either a felony or misdemeanor. Of this 59% group, 8% have prior sale convictions and 65% have been convicted more than once for a crime involving narcotics.
3. 54% of the inditees have had prior felony convictions. Of this 54% group, 59% have been convicted of a felony more than once.
4. 7% of these persons who were indicted are on parole for narcotics. 27% are on parole for some felony.

A study of all the arrests for narcotics law violations in California between July 1, 1959, to June 30, 1960, revealed the following facts: 30.7 percent of all arrests made were of persons previously arrested at least once during this twelve-month period. In one out of every five arrests, the person arrested had previously served a prison term. One out of every two arrests had received some type of major conviction or sentence.⁶

From these statistics it seems clear that narcotics law violators on parole soon return to an involvement in narcotics or have a poor record

⁵ Monograph No. 1, California State Board of Corrections (July, 1960), page 31.

⁶ Narcotics Arrests in California, July 1, 1959-June 30, 1960, compiled by Bureau of Criminal Statistics in the State Department of Justice.

of success on parole even where they are supervised by parole agents with small 30-men case loads and with the threat of an anti-narcotic test to detect a return to the use of heroin.

C. What are some of the reasons why the Adult Authority has released prisoners convicted of narcotics law violations prior to the minimum term prescribed by law?

1. PREDICTIONS OF PAROLE SUCCESS

The Adult Authority receives an evaluation from the correctional staff of the Department of Corrections as to the prisoner's conduct, attitudes and achievements in the prison environment. In addition, the Department of Correction's psychiatrist and psychiatric staff analyzes the prisoner's behavior and social controls.

From the available information as to the poor parole performance by narcotics law violators, it is apparent that the present techniques used to predict success on parole must be reviewed and revised.

New research techniques for predicting parole success must be developed so that the Adult Authority can offer substantial guarantees to society that prisoners released on parole will not return to crime.

2. POLICE REPORTS

The Adult Authority is not receiving adequate information concerning the full criminal background of prisoners seeking parole. Often, the only information the Adult Authority receives concerning the crime for which a prisoner was convicted is the commitment papers and a probation report showing that the defendant was convicted of selling two capsules of heroin to a police officer. Without further information, other than the story told by the prisoner, the Adult Authority cannot tell if the prisoner was dealing in small quantities because he was a small operator, or whether the officer could have purchased six ounces or any amount from the prisoner if the police agency had the budget to permit purchases of illegal narcotics in large amounts.

Mr. Finsley advised the Commission that the Adult Authority receives poor cooperation from some prosecuting attorneys to its inquiry as to whether a prisoner should be released on parole. Some prosecutors recommend against parole in every case. Others do not reply to this request.

The Los Angeles Police Department refuses to furnish the Adult Authority or the Department of Corrections copies of its police reports. The following policy decision was reached by the Los Angeles Police Department in 1953 and is still in effect:

"It has been determined that the practice of furnishing copies of arrest reports to administrative or quasi-judicial agencies of government, such as the California Adult Authority, California Youth Authority, Parole Boards or Commissions and the like, does not perform a service to the City of Los Angeles.

"You will therefore discontinue the practice of furnishing copies of arrests made by officers of this Department in all instances where the arrest resulted in a conviction and commitment of the arrestee and the purpose of so furnishing a copy of the arrest

report is purported to aid in the determination of length of penal servitude or condition of parole thereafter to be performed by such criminal or juvenile delinquent."

The Commission believes that the extra expense incurred by the law enforcement agency in preparing a special report for the Adult Authority would be more than offset by the savings which would result if the Adult Authority, assisted by such special reports, were to keep a narcotics peddler in prison until he was completely rehabilitated, or until he had served his full prison term, rather than release such a person prematurely and have him return to the same community to be reinvestigated, rearrested and reprocessed for the same offense.

By the same token, full weight should be given to the police reports which are received by the Adult Authority. The Commission was advised that if the police report states that a prisoner is a known peddler, the prisoner is asked if he has sold narcotics. If the prisoner denies that he is a peddler, the matter is resolved in his favor unless there is additional information to overcome the "direct evidence" present in the prisoner's denial.

3. PRE-RELEASE INVESTIGATION

The Commission was advised that the Adult Authority has only three investigators assigned to it. Such a small staff cannot possibly investigate the criminal background and prior narcotics activities of each of the narcotics law violators released on parole each year.

The Commission does not believe it is the proper function of the Adult Authority to conduct independent investigations of the criminal background and the extent of prior narcotics activities of each prisoner requesting parole. This information should be readily furnished by the police agency which was responsible for the investigation and successful prosecution of the narcotics law violator seeking parole. Unfortunately some police agencies rely on the Adult Authority to do its own independent investigation into the background of a prisoner. As a result, little or no information is furnished to the Adult Authority.

4. SPACE PROBLEM

Each year increasing numbers of prisoners are entering our state prisons.

California's prison population totaled 21,103 on November 30, 1960. This was an increase of 255 from October 31. It is also an increase of 2,079 from the end of November a year ago.⁷

The Commission believes that the present policy of the Adult Authority of releasing narcotics violators from prison prior to the minimum term prescribed by law is contrary to the best interests of society.

The Commission believes the four purposes of incarceration should be:

1. *Punishment* of the offender to discourage a repetition by him of the same offense;
2. *Rehabilitation* of the offender to prepare him to become a law-abiding member of society;

⁷ Report of the Director of Corrections to the Board of Corrections (December 2, 1960).

3. *Deterrence* to others who might be tempted to commit the same crime;

4. *Protection* of society from the offender for the period of time the law-breaker is isolated or quarantined in prison.

The high rate of recidivism or return to crime and involvement with narcotics among parolees indicates that a short stay in prison does not act as a deterrent to the prisoner rewarded with early release.

The same statistics which show a high percentage of failure on parole would seem to indicate that a short prison term interferes with or prevents the operation of an effective rehabilitation program.

A look at the increasing number of felony arrests for narcotics law violators (see Table 5, Appendix p. 50) would indicate that a policy of short prison terms before parole does not deter others from joining those who engage in the illegal traffic of narcotics.

Society receives less protection from the repetition of crimes by a parolee who has served only a short period of isolation or quarantine than would be possible from a long period of incarceration.

It is argued by some that punishment by imprisonment regardless of its length is not a deterrent to the offender or to others.

It is contended that most criminals do not consider the consequences in terms of potential punishment before they break the law.

If this assumption is correct, then the quarantine of such a person in prison for a substantial period of time until the Adult Authority has the strongest possible assurances that such person has learned to weigh the consequences before he acts, seems to be a logical necessity for the protection of society.

The Commission believes that legislation should be enacted to amend Penal Code section 3049 to provide that no person convicted of a violation of the State Narcotic Act shall be eligible for parole until he has served the minimum term prescribed by law.

It should be noted that this recommendation does not change the Indeterminate Sentence Law nor does the Commission believe any such change is necessary or advisable. The effect of this recommendation merely provides that the violator serve in prison the minimum prison term prescribed by law.

THE NARCOTIC TREATMENT—CONTROL PROJECT

The 1959 Legislature passed legislation which authorized the Department of Corrections to set up the Narcotic Treatment-Control Project. This project was designed to treat and control parolees who had been addicts prior to their imprisonment by providing for smaller parole case loads limited to 30 parolees (a regular case load consists of 70 men), the use of nalorphine or any other anti-narcotic as an objective test for heroin use, and an in-patient clinic for the detention and treatment, for no more than 90 days, of parolees who return to the use of heroin, at the direction of the parole agent, without formal action by the Adult Authority or revocation of parole.

This research project was designed to last two years. It has been in operation one full year. The first year's report has not yet been published.

During the first year of its operation certain practices developed in the administration of this project which became the subject of criticism.

These criticisms were as follows:

1. Some of the parolees were permitted to return to their home in the community without any disciplinary action or detention of any kind after repeated and consecutive positive nalorphine or other anti-narcotic tests which indicated that they had returned to the use of narcotics.
2. Some parolees in the program were permitted to go to the in-patient clinic two or more times for periods up to 90 days each without suspension, revocation of parole, or other disciplinary action.
3. Nalorphine or other anti-narcotic tests were conducted on a regularly scheduled weekly basis which permitted the parolees to use narcotics in between tests without detection.

In response to these criticisms, Director Richard A. McGee of the Department of Corrections issued the following administrative orders on October 13, 1960:

1. Any parolee who is part of the experimental group in the research program who has a positive nalorphine or other anti-narcotic test must be sent to the Chino in-patient clinic.
2. No parolee may be returned to the Chino in-patient clinic within one year without the approval of the Adult Authority.
3. Surprise testing of parolees in the research project will be increased.

No information is available as to the parole success of the parolees who were part of the "control" group in this research program. The parolees in the "control" groups do not receive the benefit of being a part of small 30-man caseloads or of being sent to the in-patient clinic at Chino for treatment—should they return to the use of nar-

cotics. In addition, some of the "controls" do not receive nalorphine or any other anti-narcotic tests.

A report of parole success for the first six months of this experimental group in the Narcotic Treatment-Control Project indicates that 61% of the 121 parolees studied indicated a clear narcotic use or involvement in criminal conduct within six months after being released from prison. Based on the results of nalorphine or other anti-narcotic testing, plus a physical examination, 58% clearly indicated narcotics use, 10% indicated a minimum use of narcotics, 7% were merely suspected of using narcotics. 25% indicated no use of narcotics. Each of these 121 parolees was aware that he faced a regularly scheduled, weekly test for the use of narcotics.

The Commission does not feel sufficient time has elapsed nor is adequate information yet available to properly evaluate this program. However, it seems clear that the fear or threat of a nalorphine or other anti-narcotic test did not prevent a return to the use of narcotics in at least 68% of the cases studied.

It should be noted that the purpose and justification for the use of an anti-narcotics test is to detect and thereby to control readdiction. A properly conducted program can be of some assistance in achieving this result.

A STUDY OF OHIO'S NARCOTICS PROBLEM

The Commission received reports from various sources that Ohio had made giant strides since 1955 in its fight to eliminate its narcotics problem. On the other hand the Commission was informed by some persons that in their opinion, the claims made about Ohio's success were baseless or greatly exaggerated.

It was decided that the Commission should make an on-the-spot study to find out what has happened in Ohio. Representing the Commission on its Ohio study were a defense lawyer, a law enforcement officer, and a deputy district attorney.

The following is a summary of the Commission's findings and conclusions based on the information obtained in this study from statistical evidence and interviews with informed persons:

1. Ohio had a serious narcotics problem in 1955 prior to changing its punishment laws. According to the Cleveland Police Department there were approximately 3,000 heroin addicts in that city in 1955. According to the Los Angeles Police Department there were 6,000 heroin addicts in Los Angeles in 1955. In 1955 the population of Los Angeles was about twice that of the City of Cleveland.

In 1955 the Cleveland Police Department seized 34½ ounces of heroin. The Los Angeles Police Department seized 29 ounces of heroin during that same year. In 1959 a total of 17 capsules of heroin were seized in Cleveland. The Los Angeles Police Department seized 216 ounces of heroin in 1959. In the first nine months of 1960, the Cleveland Police Department seized a total of *two capsules* (there are 280 capsules to an ounce). The Los Angeles Police Department seized 11 pounds of heroin during the same period of time. (See Table 6, Appendix, p. 53).

From these two factors, the number of heroin addicts and the amount of heroin seized, it would appear that when compared with Los Angeles, Cleveland had a serious narcotics problem which was increasing in its intensity prior to 1955. (See Table 6, Appendix, p. 53).

2. Ohio's law enforcement agencies are vigorously enforcing the narcotics laws. The Commission was told by some persons that Ohio's statistics concerning narcotics crimes showed a downward trend because the police were not enforcing the narcotics laws or because the police narcotics squads had been reduced so extensively that they were no longer effective. The Commission found that these two assumptions were incorrect.

The Cleveland Police Department had eight men on its narcotics squad in 1952. In 1954 this squad was increased to 13 men, which is also its present number. Because of the scarcity of heroin in Ohio since the laws were changed in 1955, the narcotics addicts have had to resort to purchasing large amounts of exempt narcotics, such as paregoric, to satisfy their desire for drugs. The police in Ohio spend most of their time policing the activities of these paregoric addicts. Prior to 1955, complaints were received by angry householders that street corner peddling was so noisy it was disturbing their sleep. Today it takes weeks of hard work to find anyone with any involvement in narcotics. There are now about 300 addicts in the Cleveland area who must rely on paregoric or cough medicines containing codeine to satisfy their desire for narcotics.

3. An increase in the penalties in Ohio has not resulted in a lower conviction rate. The conviction rate for all narcotics violations has remained approximately the same as prior to 1955. (See Table 7, Appendix, p. 54).

4. The increase in penalties in Ohio did not result in the filling up of Ohio's prisons. M. C. Koblentz, Chief of the Division of Corrections for the State of Ohio, was asked by the Commission if he had any administrative problems as a result of the new, stricter penalties for narcotics law violators. Mr. Koblentz replied:

"None at all. Penalties have been much tougher and the parole commission has been much tougher on the release of narcotics offenders. I haven't seen any problems from the correctional administrator's standpoint. Our prisons are not overbulging with narcotics offenders. Narcotics offenders represent only a small percentage in the total prison population. Our rate of commitment has not been as great percentage-wise as immediately following World War II. *We are down in penal population about 500 over what we were a year or two ago.*"

5. Ohio's new penalty laws for narcotics law violators are not mandatory without possibility of probation, suspension of sentence, or parole. A trial judge is left the discretion of granting probation or suspending sentence, even for the sale of narcotics. A narcotics peddler may be paroled after he has served a minimum of ten years under Ohio Revised Code section 2965.23. In California, a narcotics peddler is eligible for parole in one year and eight months.

6. Based on all the available evidence received by the Commission, Ohio's new penalty provisions have had a deterrent effect on narcotics

peddling activities. Of equal importance, however, in explaining Ohio's success in drastically reducing its narcotics problem since 1955, is the solid, unanimous support given law enforcement in its fight against narcotics law violators by the entire community, and the stern unsympathetic attitude of Ohio's judges in dealing with all convicted peddlers, whether addict or non-addict.

The only way the question of the deterrent effect of Ohio's new laws could be answered to the entire satisfaction of those who oppose any increase in penalties would be to interview each peddler who has ceased to operate in Ohio and ask him why he no longer peddles narcotics. This, of course, is impossible, and even if possible, their answers could be challenged as untruthful or unreliable. We must then look to the available statistical evidence and rely on the observations of those most qualified to judge what has happened in Ohio.

Table No. 6 of the Appendix, page 53 shows the dramatic drop in the amount of heroin seized in Cleveland since 1955 (from 34½ ounces in 1955 to 17 capsules in 1959).

Table No. 8 shows the decrease in new addicts reported to the Federal Bureau of Narcotics from the entire state of Ohio since 1955 (from 322 in 1955 to 31 in 1959). (See Appendix, p. 54).

Table No. 9 shows the decrease in narcotics cases filed in Ohio since 1955 (329 in 1955 to 154 in 1959 or 54%). (See Appendix, p. 54).

All persons interviewed in Ohio by the Commission including judges, probation and parole officers, criminal defense lawyers, members of the Ohio Attorney General's Office, and members of the narcotics squad of Cleveland and Cincinnati were of the opinion that Ohio's new laws have had a deterrent effect on the narcotics traffic. According to these informed persons, there are no heroin peddlers left in Ohio. Some have left Ohio to peddle in other states with weaker laws, others have gone out of business.

The Commission was told that no peddler from Chicago or New York will set foot in Ohio because of his fear of the 20-year sentence.

7. There are important differences in comparing the narcotics problem in Ohio and California. If a person wants to peddle narcotics in Ohio, he must go to New York or Chicago to make contact with someone there who is peddling or wholesaling heroin received from Europe and Asia. In California almost anyone with an automobile can drive to a Mexican border town and purchase heroin. Because of the tremendous volume of traffic and limited personnel, inspection of automobiles crossing our border is at best cursory and superficial.

It should also be noted that Ohio has refused to adopt the *Exclusionary Rule*. Consequently, there is no problem concerning the disclosure of the names of informants to establish probable cause for an arrest, search and seizure.

PUNISHMENT WITHOUT POSSIBILITY OF PROBATION, SUSPENSION OF SENTENCE, OR PAROLE

Some persons in California have advocated that narcotics peddlers should be punished by a mandatory sentence of 10 years to life or 20 years to life without the possibility of probation, suspension of sentence, or parole.

The punishment for peddling narcotics in the State of Michigan has been 20 years to life since 1952. There is no provision for suspension of sentence or probation. Parole may not be granted until the minimum term (20 years) has been served.

The Commission made an on-the-spot study in Detroit, Michigan to find out for itself how this law was working. The Commission wanted to find out the answer to two questions:

- (1) Were juries refusing to convict narcotics offenders because of the severe punishment?
- (2) Are the courts in Michigan enforcing these new laws or are they being circumvented?

The Commission found that juries in Detroit, Michigan convict narcotics peddlers without hesitation. In fact, the Commission was told by a veteran trial judge that juries were convicting individuals of peddling narcotics on a very slight evidence of guilt.

This same judge has granted motions for a new trial in two separate cases because he felt the evidence produced at these trials was insufficient to justify the punishment called for by the law.

The Commission found that some of the judges in Detroit, Michigan felt that the new laws were too harsh. As a result, pressure is exerted on Wayne County, Michigan prosecutors by the courts to accept pleas of guilty to lesser offenses. (See Table 10, Appendix, p. 55).

In some cases where a peddler has refused to plead guilty to a lesser offense, and has been found guilty of selling narcotics, the court has granted a motion for a new trial on the grounds of cruel and unusual punishment.

The judges interviewed by the Commission in Detroit, Michigan feel that it is wrong to take away the discretion of the court to decide whether a particular individual should receive probation or the maximum punishment prescribed by law. These judges feel that a law which sends all peddlers to prison for a minimum of 20 years regardless of how serious the offense was, or how much narcotics was involved, is unjust.

Graphic evidence as to what has happened under the strict Michigan laws to prosecutions of narcotics peddlers can be found in the statistics compiled by the Detroit Narcotic Squad since 1952. During the last eight years, 1,005 defendants have been charged with the peddling of narcotics. Out of this number, only 30 individuals have been convicted of peddling narcotics. This represents about 3.3 percent of the total number of narcotics peddling cases filed. Most of the remainder of these cases resulted in guilty pleas to lesser offenses.

Two conclusions can be drawn from Michigan's experience with a twenty-year minimum sentence. *Juries will convict* if given an opportunity, but few sales cases ever reach the jury because most are disposed by guilty pleas to lesser offenses. *Judges will not enforce* 20-year mandatory punishment laws which take away their right to grant probation, or suspend sentence in exceptional cases.

In Ohio, where the courts are given the right to grant probation or to suspend sentence, and parole is available, probation for narcotics peddlers is practically unheard of. Probation can be granted, or a

sentence suspended, in exceptional cases. No pressure is exerted by the court on the prosecuting attorney to accept a lesser plea.

The Commission believes that Ohio judges stand solidly behind the new, more severe punishment laws because their discretionary powers have not been tampered with.

POSSESSION FOR SALE

Both New York and Ohio have adopted laws which prohibit the possession of narcotics by an unauthorized person with the intention to sell.⁸ This crime carries a much more severe penalty than mere possession for personal use.

The Commission made a study in the State of Ohio to determine if a similar law should be adopted in California. The Commission found that this new crime has proved itself to be a very effective tool in the enforcement of the narcotics laws in Ohio.

Under this law, evidence of a peddler's past narcotics activities, and his contacts with addicts and other peddlers is admissible to prove the intent to possess narcotics for sale. Such evidence can demonstrate the true nature and scope of a peddler's involvement with the narcotics traffic and can assist the court in fixing an appropriate sentence. The penalty in Ohio for possession with the intent to sell is 10 to 20 years. The penalty for possession without such an intent is 2 to 5 years.

In Ohio, under these penalty provisions, an addict caught with a small quantity of heroin in his possession for his own use can receive a relatively light sentence. A peddler caught in the possession of narcotics which he intends to sell to others, can receive a much heavier sentence for a much more serious crime. In California, both persons now receive exactly the same prison term (1 to 10 years) and each is eligible for a county jail sentence and a reduction of the charge to a misdemeanor.

The Commission also learned in its study in Ohio, that a peddler who has given assistance to law enforcement and has been instrumental in the arrest of other peddlers, may be allowed to plead guilty to the crime of possession for sale (10 to 20 years) rather than to the crime of selling narcotics (20 to 40 years). The existence of such an opportunity to spend fewer years in prison has resulted in offers by many arrested peddlers to assist law enforcement, and has made every peddler afraid that his last customer or even his best underworld friend may at that very moment be informing on him to the police.

POLICE RESPONSIBILITY TO THE COURTS

There has been some public criticism by certain law enforcement officers directed at the courts and the practice of sentencing some narcotics peddlers to the county jail or granting probation. The Commission studied the records of the Los Angeles Superior Court which show the disposition of cases involving narcotics offenders. In 1959, out of a total of 282 narcotics sales cases where convictions were obtained, 177 or 63% were sentenced to the state prison. Every person convicted of

⁸ New York, Clevenger-Gilbert, Criminal Code and Penal Law—Section 1751 (Penalty 5 to 15 years). (See Appendix, p. 56.)
 Page's Ohio Revised Code Annotated—Section 3719.20 (Penalty 10 to 20 years). (See Appendix, p. 56.)

the sale of narcotics who had a prior narcotics conviction which was pleaded and proved (54 cases) was sentenced to the state prison.

The Commission made a study of 61 sales cases where the defendants were sentenced to the county jail or received a probationary sentence to find out what information the court had before it prior to rendering its sentence. Out of the 61 cases studied, there was no report of any contact with the police by the probation officer in 19 or 31% of the cases. Twelve of the 19 cases where there was no report of any contact with the police were investigated by the Los Angeles Police Department. One case was investigated by the Sheriff's Office; three were from the State Bureau of Narcotic Enforcement.

There was a record of some contact in 42 of the 61 cases studied. In 29 cases (or 48% of the total cases studied) there was no police recommendation made to the court concerning the type of sentence which should be imposed. In only five of the 61 cases was a substantial sentence recommended by the law enforcement agency which investigated the case. Additional information was furnished to the court concerning the defendant's involvement with narcotics in only 17 of the 29 cases where no recommendation was made. Thus in 31 or over one-half of the cases studied, there was either no contact with the police (19 cases) or no additional information (12 cases).

The court relies heavily on the probation officer's report to give it a complete background on the defendant and the extent of his involvement with narcotics. The typical probation report contains a brief one or two-paragraph summary of the transcript of the preliminary hearing or of grand jury proceedings. No report was made in any of these cases of the testimony at the trial.

If there is no contact between the probation officer and the police, the court cannot be furnished a true picture of the defendant and the seriousness of his narcotics activities. The only additional information before the court in such cases is the defendant's self-serving statements.

In Detroit, Michigan, the Commission learned that the Detroit Police Department furnishes to the court and the probation department a special report and recommendation on each person convicted of a narcotics law violation. A sample of such a report is set forth below:

DETROIT POLICE DEPARTMENT
NARCOTIC BUREAU

To: Men's Probation—Recorders Court July 12, 1960

Subject: Probation report on _____ of _____
who plead guilty to Possession, this date, before Judge Skillman.

On May 25, 1960, at 10:20 AM, Informer #11712 came to the Narcotic Bureau and stated that it was possible to make a purchase of heroin from a source known as "Algie" a.k.a., _____, who was staying at _____.

The Informer was searched for money or narcotics with negative results, by Matron Shanaman on the 8th floor of Police Headquarters. The Informer was then furnished with \$24.00 in Secret Service Funds, from which the serial numbers were noted and bills dusted with Glocraft powder.

The Informer in company with Patr. William Patterson of the Vice Bureau proceeded to the vic. of _____ under the surveillance of Det. Paul Gyetvai, Robert Condo and Patr. Howard Austin. Patr. Patterson was driving a private automobile.

At 12:25 pm, the informant exited the above address and returned to Patr. Patterson and turned over to the officer, a cellophane package containing 19 capsules of heroin. Informant stated that she had given the \$24.00 in Secret Service Funds to _____ a.k.a. Algee and in turn had received the 19 capsules of heroin from him.

Analysis No. N-4303 showed the contents of the capsules to contain 17.33 Grains of Heroin. Informer identified Mug #69868 as that of the subject who sold her the 19 capsules of heroin.

In August of 1950, subject was arrested for violating the State Narcotic Law and sentenced to serve six months to four years for possession of Marijuana. Subject was paroled in April of 1951. In 1952, subject was sentenced for Arson and discharged from parole in April of 1954. Subsequent to this time, subject has been a constant source of trouble and in each instance narcotics were found to be the background, but there was insufficient evidence to prosecute.

"His present involvement in the sale of drugs, as indicated in the arrest report, is indicative of his capabilities of procuring drugs in sufficient quantities to sell to other addicts. When arrested, subject made full admissions to the above sale. He further stated that he had been acquiring his drugs from two well known sources of supply here in Detroit. At the time of subject's arraignment he indicated his willingness to cooperate in initiating cases against these two sources of supply, but when given the opportunity to assist, he refused to do so. In view of this information, subject's extensive criminal record, it is recommended that he be given a substantial confinement sentence.

Detective /s/ Paul Gyetvai Patrolman /s/ Howard Austin
Approved: Inspector /s/ Russell J. McCarty
Commanding Officer

The Commission believes that a law enforcement officer's responsibility to society does not end with the arrest of a defendant. The police have a continuing obligation to assist the court in every way in order that a proper sentence may be imposed. Without such complete cooperation and full background information on each defendant's narcotics activities, the court may be expected to err occasionally in passing sentence when it has nothing new before it except a defendant's denials of involvement in the narcotics traffic except as an addict, and his attorney's eloquent plea for a second chance.

The Commission has learned that it has become the practice in some counties in California for the prosecuting attorney to remain silent at probation and sentence hearings. The defendant or his attorney are permitted by the court to speak and to offer a plea for a light sentence or probation. No recommendation is made by the prosecutor. The court is left to determine the appropriate sentence in the face of the tears of the defendant's family and his lawyer's plea for leniency without

the support or assistance of the prosecutor who has originally sought conviction and punishment.

The Commission believes it is the duty of the prosecuting attorney to assist the court by answering any erroneous statements made on behalf of the defendant and to be prepared to counter any plea made in mitigation of the defendant's crime by an account of any matters which should be considered by the court either for or against leniency for the defendant.

A recommendation as to punishment by a prosecutor should not be regarded as an interference with the court's discretionary powers. The court is free to disregard an unreasonable appeal or recommendation, whether made by the defendant or the prosecutor. Nor should a prosecutor be considered a persecutor if he in good faith and for just cause recommends a substantial sentence. Such a recommendation should be regarded as an attempt to assist the court in arriving at a just punishment. The defendant is permitted to make a plea to the court for leniency in every case. The prosecutor should be given an equal opportunity to be heard as to the proper sentence.

THE ADDICT PEDDLER

Some persons have advocated that a distinction should be made in California between the addict peddler and the non-addict peddler. It is believed by such persons that the addict peddler is a "victim of the narcotic traffic" and should be treated sympathetically and not be required to serve as long a prison term as the non-addict peddler. This belief is based on the assumption that addict peddlers are sick people who peddle narcotics only to earn enough money to keep themselves supplied with narcotics. The non-addict peddler is pictured as a member of a powerful combine or monopoly which controls the importation, distribution and sale of heroin and other narcotics in California. The non-addict peddler has been fictionalized by the novelist and the screenwriter as a shadowy, mystery man who lives in a castle on a high hill surrounded by a high fence and sinister bodyguards.

The Commission has learned from law enforcement officers throughout the state of California that the concept of the non-addict peddler as the dominant figure in the narcotic traffic in this state and the greatest menace to society, is erroneous and a myth.

There is no monopoly in the narcotics traffic in California. Any person with an automobile can become a narcotics peddler by driving to Mexico and making a purchase in any quantity he desires.

Because of the presence of abundant supplies of narcotics in Mexico, there is no need for a complex organization to handle the shipment and distribution of narcotics. In cities such as Chicago or Detroit it takes enterprise, organization, ingenuity and knowhow to obtain heroin from the middle east. It takes no talent or imagination to drive to Mexico and make a contact for the purchase of heroin. There is no need to pay a middleman or a wholesaler. With over 80,000 automobiles crossing the border at Tijuana on some weekends the risk of detection for the smuggler and peddler is very slight.

It is felt by the Commission that many persons have been misled into believing that there are a few "Capone-like" racketeers who control

the narcotics traffic and it is only these persons who should receive long prison terms.

The vast majority of the narcotics peddlers in California are also addicts. They have exercised the free choice to sell narcotics because of the tremendous profits involved. An ounce of heroin sells for more than ten times the price of an ounce of gold, is far easier to obtain than mining gold and it is far easier to dispose of. Furthermore, the addition of adulterants only serves to increase its weight and the peddler's profits.

Every addict in California is a potential peddler. The addict peddler spends all his time with his fellow addicts in an addict-culture. He enjoys being an addict and a peddler and scoffs at the "squares" who are gainfully and lawfully employed. The addict peddler is constantly on the alert for new customers to increase his profits and help him maintain his chosen way of life. For this reason he occasionally slips and sells to a police officer working undercover.

Another concept which has developed concerning the addict peddler is that he is an emotionally disturbed person who started using narcotics to escape from his problems and then became heavily addicted, causing him to turn to criminal activity to support his habit. The Department of Corrections conducted a study of 611 adult males admitted to prison between September 27 and December 27, 1957. Of this group 139 had some experience with opiates. The results of this study showed that "Almost all of this group were police problems before they started to use opiates."⁹

It is difficult to draw definite conclusions from such a small sampling, but at least it can be said that there is some statistical evidence to show that addiction follows criminal activity among a majority of those who wind up in the state prison.

The Addict-peddler because he is addiction-prone is a greater parole risk than the non-addict peddler. As soon as he leaves prison he is very likely to start using narcotics again and may return to the same criminal activities and associations which resulted in his original conviction and subsequent imprisonment.

The Commission believes that the addict peddler should not be given a privileged status over the non-addict peddler. The addict peddler is viewed sympathetically as not becoming a criminal until he becomes a hopeless addict. Actually, the addict peddler was probably a criminal before he became an addict. He represents the real menace to society and to the addiction-prone personality.

BUREAU OF NARCOTIC ENFORCEMENT

The Commission was advised that the Bureau of Narcotic Enforcement and the Federal Bureau of Narcotics have received cooperation from law enforcement officers in Mexico in the exchange of confidential information concerning narcotics law violators operating on both sides of the international border. Through the combined efforts of the Mexican authorities and the Bureau of Narcotic Enforcement, and the Federal Bureau of Narcotics, important arrests have been made in both countries of persons who smuggle narcotics into California and

⁹ Narcotics in California—A report by the Board of Corrections (1959), page 8.

of persons engaged in the cultivation of opium and in the production of heroin in Mexico.

The Commission's study has revealed that a "quantitative test" has been set up by some judges and by the Department of Corrections and the Adult Authority in measuring the extent of the peddling activities of a narcotics law violator. The length of a prisoner's sentence or term in prison is determined, in part, by the quantity of narcotics sold by him to an undercover narcotics officer. In the publication, "Narcotics in California", the Board of Corrections states that out of 598 new adult male prisoners received in 1957 only three offenders were apprehended in possession of at least three ounces of heroin and by definition operating at the "management level".¹⁰ (Emphasis added.)

In Appendix A of this same report, it is stated:

"Management level of illicit trafficking was determined by the quantitative measurement of the volume of drugs for which the person was arrested and/or from arresting police officer's report. The minimum volume was arbitrarily set at three ounces of opiates and less than that were classified as 'pushers'."

Almost all prosecutions in California for the sale of narcotics involve a sale to a law enforcement officer operating undercover as a user or peddler of narcotics. Each law enforcement agency entrusted with the enforcement of the narcotics laws operates under a budget with limited funds allocated for the purchase of narcotics to be used as evidence. It is the practice of these law enforcement agencies, including the Bureau of Narcotic Enforcement, to stretch the funds set up in the budget for purchasing narcotics as far as possible. These law enforcement agencies have operated under the belief that it is sound economics as well as affording a greater protection for society if they catch 100 narcotics peddlers with \$1,000 by purchasing \$10 worth of heroin from each, instead of catching only ten by spending \$100 on each purchase, or one peddler with a \$1,000 purchase. The Commission was advised by experienced narcotics officers that the fact that only two capsules of heroin are purchased from a peddler does not make the peddler a small "pusher" with a minor involvement in the narcotic traffic. The same peddler may have been ready, willing and able to arrange for the sale of three ounces or three pounds of heroin if the undercover officer had the funds to make such a purchase.

Because of the hazards of the business, a narcotics peddler will not usually carry a large amount of heroin on his person or in his car. When a customer is found, the peddler will go to the place where he has hidden his supply of narcotics and return with the amount of heroin requested. If he does not have enough narcotics on hand to fill the order, he can replenish his stock in a few hours by driving to Tijuana and ordering a fresh supply of narcotics.

Any peddler can, with little effort, furnish three ounces of heroin or more to any customer who can come up with the purchase price. In other words, in California, any peddler may qualify for the "management level".

¹⁰ Narcotics in California, a Report by the Board of Corrections (1959), page 8.

The Commission believes that in connection with sentences and determining the time to be served in prison, a quantitative test for narcotics peddlers is a meaningless and unreliable test of the true nature of a peddler's narcotics activities. The size of a business enterprise should not be determined by a single customer's ability to pay.

If the quantitative test is to continue to be utilized by the courts and the Adult Authority as a guide, then additional funds should be provided the Bureau of Narcotic Enforcement, and the other police agencies engaged in the enforcement of the State Narcotic Act for the purpose of buying larger quantities of narcotics from each peddler.

THE EXCLUSIONARY RULE AND THE PLIGHT OF THE CONFIDENTIAL INFORMER

In 1955, the Supreme Court of California decided in the *Cahan* case¹¹ that evidence obtained by "unreasonable" searches and seizures by a law enforcement officer would be inadmissible and excluded in a criminal case at the defendant's request. The *Cahan* case was a book-making case; however, the *Exclusionary Rule* applies to all criminal cases including narcotics law violations. Later decisions of the Supreme Court held that a search as an incident to a lawful arrest based upon probable cause was a "reasonable" search without a search warrant. The Supreme Court also ruled that probable cause could be based on information from one reliable informant.

Recently the California Supreme Court ruled in the *Priestly* and *McShann* cases that an informer's name must be disclosed at the defendant's request in the following situations:

1. Where the only evidence to establish probable cause to justify a search is information from an informer (*Priestly v. Superior Court*, 50 Cal. 2d 812).
2. Where the informer introduced the peddler to the officer, or where the informer was a participant or an eye-witness to a sale of narcotics (*People v. McShann*, 50 Cal. 2d 802; See also *People v. Williams*, 51 Cal. 2d 355, and *People v. Durazo*, 52 Cal. 2d 354).

It is the majority opinion of all the law enforcement agencies concerned with enforcing the narcotics laws that the *Cahan* and *Priestly* cases have seriously handicapped their efforts to control the narcotics problem.

The Commission was told that unless some relief from these restrictive decisions is forthcoming, law enforcement would be unable to cope with the ever-increasing number of narcotics law violators.

Narcotics law violations are unreported crimes. If a person's home is burglarized, his pocket picked, his checks forged, or his car stolen he rushes to the police to report the crime. When a peddler sells narcotics to an addict each is committing a crime. Naturally, no report is ever made to the police of this illegal transaction. In order to build a case against a narcotics law violator, the police must rely on tips from informers to tell them who is selling narcotics. A narcotics officer must go into the streets to trap the peddler without the help of the peddler's

¹¹ *People v. Cahan*, 44 Cal. 2d 434.

"victims"—the addicts who buy narcotics. The majority of narcotics cases are solved on the basis of information from informants.

A narcotics peddler will not sell to a stranger for fear that he might be an undercover narcotics officer, unless he is vouched for by an addict or a friend. As a result, an officer working undercover must use an informer to gain an introduction to a peddler. After the officer gains the peddler's confidence and begins to purchase narcotics from him, the informer fades out of the picture.

An addict is anxious to protect his peddler from police action so as not to lose his source of supply. A narcotics officer who receives information from an informant is also anxious to protect the identity of his informant. Disclosure of the name of an informant can result in death or serious bodily harm to the informant or his family, or cause him to so fear the threat of such danger that he will refuse to cooperate further with the police, or deny he gave such information. As a result, law enforcement officers will not divulge the names of their informants.

Because the eye-witness-informer rule of the *McShann* case is a protection derived from the due process clause, any attempt to change it by a legislative act would undoubtedly be held unconstitutional.

The rule requiring the disclosure of the name of an informant—when the only evidence to establish probable cause to justify an arrest and a search is information from an informer—is not based on the due process clause. The informer rule of the *Priestly* case does not refer to the guilt or innocence of the defendant of the crime charged. It refers solely to the issue of probable cause to arrest the defendant. If the defendant demands the name of the informant but fails to make a motion to strike, a conviction will stand if the evidence is sufficient to prove the defendant's guilt. The rule of the *Priestly* case was created by the court to implement the *Exclusionary Rule*. The Supreme Court held in the *Priestly* case that by requiring disclosure a defendant would be able to find out if the officer had told the truth in stating he had received information from an informer, or whether the informer, if one existed, was reliable.

The rules established by the *Cahan* and *Priestly* cases can be changed, modified, or even completely nullified by the legislature. In the *Cahan* case itself, the California Supreme Court, quoting from a decision of the United States Supreme Court in *Wolf v. Colorado*¹² pointed out that the *Exclusionary Rule* was a rule of evidence which could be changed by the legislature.¹³

Michigan and Maryland have adopted exceptions to the *Exclusionary Rule* as to narcotics crimes in response to requests by law enforcement for assistance in coping with a mounting narcotics problem.

Michigan adopted the *Exclusionary Rule* in 1919 in the case of *People v. Marxhausen*, 204 Mich. 559, 171 N.W. 557, 3 A.L.R. 1505. In 1933, in the case of *People v. Stein*, 265 Mich. 610, 251 N.W. 788, the Michigan Supreme Court reversed a judgment of conviction in a case involving the seizure of a gun in an automobile containing the defendant Stein and other ex-convicts on the grounds that the search and seizure of the weapon was unreasonable.

¹² "... the Federal *Exclusionary Rule* is not a command of the Fourth Amendment but a judicially created rule of evidence which Congress might negate." *Wolf v. Colorado*, 338 U.S. at 39-40.

¹³ *People v. Cahan*, 44 Cal. 2d 434 at 440.

The Commission was informed by some of the persons interviewed in Michigan that there was a strong public reaction against the decision in the *Stein* case. The newspapers of Michigan carried on a vigorous campaign to remove dangerous weapons from the purview of the *Exclusionary Rule*. In 1936, the Michigan Constitution was amended to exclude from the application of the *Exclusionary Rule* weapons seized outside the curtilage¹⁴ of any dwelling house.

In order to help the police cope with a rising narcotics crime rate, the Michigan Constitution was again amended in 1952 to remove narcotics and narcotic drugs seized outside the curtilage of any dwelling house from the application of the *Exclusionary Rule*. (See Appendix, p. 57). The Commission studied the operation of the Michigan exception to the *Exclusionary Rule* in Detroit, Michigan, and found that everyone was unanimous in the opinion that this exception had been an invaluable help to the police in fighting the narcotics problem. The Commission conferred with judges, defense lawyers and the Chairman of the Detroit Branch of the American Civil Liberties Union to determine if there had been any abuse of this rule by the police. The commission was told that there had been no abuses under this law. It was pointed out by the Chairman of the American Civil Liberties Union that they would be aware of any complaints if there had been any abuses. The Commission was told that there had been no complaints to the American Civil Union of abuses of the Michigan exception to the *Exclusionary Rule*. The American Bar Foundation (the research branch of the American Bar Association) conducted a survey of police practices in Detroit, Michigan. The Commission interviewed Mr. John C. Leary, the Acting Administrator of the American Bar Foundation, concerning this study. Mr. Leary stated that the American Bar Foundation has not found any evidence of abuse of the Michigan exception to the *Exclusionary Rule* by the Detroit Police Department.

In 1928, the Court of Appeals of Maryland, in the case of *Meisinger v. Maryland*, 155 Md. 195 refused to adopt the *Exclusionary Rule*. Instead the court reaffirmed the Maryland common law rule that physical evidence is admissible regardless of the manner in which it was obtained.

The General Assembly of Maryland passed a statute in 1929 adopting the *Exclusionary Rule* for the prosecution of misdemeanors only. This left the common law in operation as to all felony cases. (See Article 35, section 5, Maryland Annotated Code, 1957).

In 1935 prosecutions under the Narcotic Drugs Act was exempted from the application of the *Exclusionary Rule*. (See Article 27, section 299, Maryland Annotated Code, 1957).

In 1947 the *Exclusionary Rule* was amended by the Maryland Legislature to remove from its application prosecutions for the carrying of concealed weapons in Baltimore County. In 1951, the concealed weapon exemption was extended to 13 other counties. In the same year the *Exclusionary Rule* was amended to exclude prosecutions for violations of the gambling laws in certain specified counties. The constitutionality of these exceptions to the Maryland *Exclusionary Rule* was challenged

¹⁴ Webster's New Twentieth-Century Dictionary, Second Edition, defines the word *curtilage* as follows: "In law, a yard, garden, enclosure, or field near and belonging to a dwelling."

in the case of *Salsburg v. Maryland*, 346 U.S. 545, 98 L. Ed. 281 (1953). The United States Supreme Court held that these statutes modifying the *Exclusionary Rule* were constitutional. The United States Supreme Court in upholding these statutes stated in the *Salsburg* case at page 550:

"A state has especially wide discretion in prescribing practice relating to its police power, as is the case here." (*Salsburg v. Maryland*, 346 U.S. 545, 550).

In summary, the United States Supreme Court has ruled through Mr. Justice Black in *Wolf v. Colorado* that the *Exclusionary Rule* is not a part of the Constitution but is a mere rule of evidence which the legislature can negate in its entirety. In *Salsburg v. Maryland*, the United States Supreme Court held that a statute specifically exempting narcotics, dangerous weapons, and gambling paraphernalia from the application of the *Exclusionary Rule* is constitutional.

Returning to the informer problem presented by the *Priestly* case, it should follow that since the legislature can negate the entire *Exclusionary Rule* (*Wolf v. Colorado* and *People v. Cahan*) or exempt certain crimes from its application (*Salsburg v. Maryland*), the legislature can modify or negate an evidentiary rule adopted by the Supreme Court to implement the *Exclusionary Rule*. Therefore, a statute which would protect the identity of the informer on the issue of probable cause only, would be constitutional.

The Commission believes that some relief from the *Cahan* case and the *Exclusionary Rule* is necessary in order to assist law enforcement in its fight to control and reduce the narcotics problem. At the same time, the Commission believes that an officer should obtain a search warrant, whenever possible, before entering a private home. In order to induce law enforcement officers to use a search warrant, whenever possible, the Commission recommends that the *Exclusionary Rule* should not apply to evidence obtained by means of a search warrant. Adequate protection would still be afforded to the private citizen since a magistrate would have to pass on the merits of the reasons advanced for the issuance of a search warrant before any search could be made.

The Commission also believes that legislation should be enacted to provide that a law enforcement officer would not be required to disclose the name of any person who has furnished information which establishes probable cause for the issuance of a search warrant, and evidence seized by means of a search warrant based on such information should not be excluded on the grounds that it was obtained by means of an unreasonable search and seizure.

The Commission believes that a man's house should be surrounded with legal safeguards to protect it from invasion by the police or any other uninvited person. For that reason, the Commission has recommended that law enforcement be given an incentive to use a search warrant in searching a private residence. However, new modern means of transportation and escape have made the search warrant impractical for searches outside the home. Further, the concept of the sanctity of a man's home, which caused the founding fathers to condemn unreasonable searches and seizures, should not be extended beyond the curtilage. If an officer hesitates in searching an automobile he suspects

contains narcotics, or takes the time to go to the district attorney to find out if he has probable cause to search, he may return to find that the car has been hidden, or even taken out of state, or the evidence may have been destroyed. The Commission believes that the *Exclusionary Rule* should not apply to any search and seizure outside the curtilage of any dwelling house, apartment or other place of permanent or temporary abode. Michigan adopted a similar rule in 1952 to help law enforcement combat a growing narcotics problem. The Commission learned from its on-the-spot study that the rule has been of great help to law enforcement. It was the unanimous opinion of all the persons interviewed in Detroit including lawyers, judges, and the Chairman of the American Civil Liberties Union that this exception to the *Exclusionary Rule* has not been abused or misused by law enforcement to justify "rousts" or illegal arrests. A Michigan police officer who searches an automobile without probable cause, cannot defend or justify his conduct in an action for false arrest by the claim that he was searching for narcotics.

SEARCH WARRANTS

Probably the basic reason why the Constitution, both state and federal, calls for the use of a search warrant is to place between the private citizen and the law enforcement officer an impartial judge who can decide, in advance, whether enough evidence exists to warrant the invasion of the privacy of a man's home in order to conduct a search.

The Commission has made a study to determine the number of search warrants issued since 1955 in eight of our larger Municipal Court Judicial Districts. In comparison to the number of narcotics arrests which are made each year very little use is made of the search warrant in California.

In 1959, 2,366 felony complaints were filed for narcotics law violations in Los Angeles County. During that same period of time only 25 search warrants were issued by the Municipal Court of the Los Angeles Judicial District.

In San Francisco, only seven search warrants have been issued in narcotics cases since 1955 (see Table 11, Appendix, p. 58).

The Commission inquired of representative law enforcement officers as to why such little use was made of the search warrant. The reasons advanced can be summarized as follows:

1. Since the California Supreme Court has declared that a search made as an incident to a lawful arrest is "reasonable" without a search warrant, a search warrant is not necessary where probable cause for an arrest exists.

2. If a search warrant is used, the officer making the search is limited to a seizure of the property designated in the search warrant. Where the officer is conducting a search as an incident to a lawful arrest, there is no such limitation or restriction.

3. The procedural steps necessary to secure a search warrant are too time-consuming. It takes as much as a half day to obtain a search warrant from the District Attorney's office in some counties. By the time a warrant is issued, the property sought will have been sold, moved to another hiding place, or destroyed.

4. Penal Code section 1533 requires a positive allegation that the property is on the person or in the place to be searched before the warrant may be served at night. On the other hand, a search as an incident to a lawful arrest may be made at night based solely on hearsay information.

The time factor in securing a search warrant is complicated by the existence of high speed automobiles and other modern means of transportation which were not even dreamed of at the time the Constitution was drafted.

Alameda and San Diego County law enforcement officials have worked out a partial solution to the time problem.

The District Attorney's Office in each of these counties has prepared sample affidavit forms which have been issued to the local police agencies covering many common factual situations encountered in drafting an affidavit based on the information he has received and follow the suggested form. In San Diego the officer is also furnished blank affidavits on special paper which does not require the use of carbon paper for making duplicate copies.

A San Diego narcotics officer who receives information at night concerning narcotics activity can fill out his own affidavit using the suggested affidavit forms as a guide. He can then go directly to the home of a municipal judge and have a search warrant issued immediately without the necessity of waiting for the district attorney's office to open for business the following day.

By using this simplified procedure, a San Diego officer can receive information concerning a narcotics law violator, obtain a search warrant, and conduct a search all within the same hour.

The Commission believes that law enforcement officials throughout California should reduce the paper work and procedures necessary for the issuance of a search warrant to avoid delay when time is of the essence.

The Commission further believes, based on its study of the statistics on the relatively few search warrants obtained in California, that peace officers in every county in California, including those specifically mentioned above should not only adopt simplified search warrant procedures, but should also obtain search warrants whenever possible, and in far greater numbers than indicated on Table No. 11.

(Note: On June 19, 1961, the United States Supreme Court in *Mapp v. Ohio*, overruled its decision in *Wolf v. Colorado*. It was the realization by the Commission that such a decision by the United States Supreme Court was impending that motivated the Commission's original recommendation as to how law enforcement should conduct itself in the field of search and seizure, especially relating to the necessity for an increase in the use of search warrants.

When this report was published in December, 1960, the Commission recommended there should be no requirement that the identity of an informant be disclosed in order to obtain a search warrant issued pursuant to information from a confidential informer (see Recommendation No. 18 of the first Interim Report). On May 1, 1961, the Supreme Court of California ruled that "when a search is made pursuant to a warrant valid on its face the prosecution is not required to reveal the identity of the informer in order to establish the legality of the search and the admissibility of the evidence obtained as a result of it" (*People v. Keener*, 55 A.C. 719). The language of the Supreme Court in the *Keener* case closely parallels the arguments advanced by the Commission in support of its Recommendation No. 18. This decision clears up many of the problems facing law enforcement in the field of search and seizure.)

APPENDIX

TABLE No. 1
**COMMITMENTS FOR DRUG ADDICTION TO CALIFORNIA STATE
HOSPITALS FOR GENERAL PSYCHIATRY**
Fiscal Years Ending June 30, 1939-1960

<i>Fiscal year ending June 30</i>	<i>Total</i>	<i>Commitments for narcotic drug addiction</i>		<i>Percent Readmissions</i>
		<i>First admissions</i>	<i>Re- admissions</i>	
1939	11	11	—	0
1940	22	20	2	9.1
1941	15	14	1	6.7
1942	47	40	7	14.9
1943	48	38	10	20.8
1944	48	42	6	12.5
1945	56	48	8	14.3
1946	51	44	7	13.7
1947	86	72	14	16.3
1948	72	58	14	14.4
1949	97	85	12	12.4
1950	153	132	21	13.7
1951	226	196	30	13.3
1952	327	283	44	13.4
1953	333	276	57	17.1
1954	394	331	63	16.0
1955	367	"	"	"
1956	456	"	"	"
1957	350	"	"	"
1958	243	"	"	"
1959	168	"	"	"

" Data not available for those years.

SOURCE: Statistical Research Bureau, Department of Mental Hygiene, October 25, 1960.

TABLE No. 2
OFFENSE AND TIME SERVED IN PRISON
MALE NARCOTICS OFFENDERS PAROLED IN 1959

<i>Offense</i>	<i>Number</i>	<i>Median</i>	<i>Time Served in Months</i>
			<i>Range of middle 80%</i>
All Offenses	4,637	24	12-49
Narcotics Offenses	736	28	15-46
Sale to Minor	20	33.5	23-45
Sale to Minor w/pr.	—	—	—
Possession	354	23	12-36
Possession w/pr.	124	30	18-48
Sale	181	33	24-45
Sale w/pr.	55	48	42-55
Forgery	2	—	—
Forgery w/like pr.	—	—	—

SOURCE: California Department of Corrections.

TABLE No. 3

**AVERAGE TIME SERVED BY ADULT MALE FELONS BEFORE FIRST PAROLE
Offense and Prior Criminal Commitment History 1951-55, 1956, 1957, 1958, 1959
and January-June 1960 Average Time Served Not
Computed for Less Than 15 Cases**

Total Offense and year of parole	No.	Average time served in mos.	Number of Prior Commitments Served					
			Class 1*		Class 2*		Class 3*	
			No.	Average time served in mos.	No.	Average time served in mos.	No.	Average time served in mos.
Narcotics								
1951-1955	1,177	26.8	210	22.8	482	23.0	485	30.5
1956	516	28.2	69	24.6	228	26.8	219	30.8
1957	523	29.3	66	25.1	229	27.7	228	32.1
1958	503	29.8	60	26.6	235	28.3	208	32.3
1959	736	29.5	81	25.9	328	27.8	327	32.1
Jan.-June 1960	351	30.3	37	24.4	154	27.2	160	34.7

* Class 1—No prior commitment served.

* Class 2—One or two jail or juvenile, or one prison.

* Class 3—Three or more jail or juvenile, One prison plus misdemeanor. Two or more prison.

Research Division

Adm. Statistics Section

Department of Corrections
August 15, 1960

TABLE No. 3a

**MALE FELONS FIRST ADMITTED TO PRISON IN 1954-1958
FOR NARCOTIC OFFENSES**

With Percent Still in Prison as of December 31, 1956, 1957, 1958, 1959

Year of admission	Male first admission	Percent in prison December 31 after admission					
		Same year *	2nd year	3rd year	4th year	5th year	6th year
1954	650	--	--	47.5	17.7	6.8	2.3
1955	501	--	87.8	49.1	23.6	6.2	--
1956	710	--	85.2	50.7	20.7	--	--
1957	742	--	89.8	48.4	--	--	--
1958	748	--	82.1	--	--	--	--

* Not completed because RGC is excluded from tab runs.

SOURCE: Research Division, Adm. Statistics Section, Department of Corrections, February 15, 1960.

TABLE No. 4

ADULT AUTHORITY GUIDE FOR THE HANDLING OF NARCOTIC OFFENDERS *
Adopted April 29, 1960

Adopted April 29, 1960

With the expansion of the Adult Authority program through the use of additional panels and Hearing Representatives, and to the end that the handling of such cases by the various panels will be effectively coordinated, the following *Adult Authority Guide for the Handling of Narcotic Offenders* is herewith adopted.

It should be noted the criteria herein is to serve only as a guide. All other factors concerning each prisoner will continue to be evaluated on an individual (case by case) basis; the quantity and type of nar-

* While the seriousness of marijuana as a narcotic is fully recognized by the Adult Authority, this guide is designed to give consideration to heroin cases, i.e., users of an addiction forming (hard) narcotic.

cotics; the kind of individual involved, including his social and criminal history; the personal and emotional changes which may have occurred through the rehabilitative efforts of the Department of Corrections, etc.

It should also be noted that PRIORS refer to prior prison servitude for a narcotics offense.

GUIDE

Type of offense	Statute	Term fixed	Prison	On parole
Sale to minor	5 yrs. -life	8 yrs.	3 yrs.	5 yrs.
Sale to minor w/prior	10 yrs. -life	10 yrs.	5 yrs.	5 yrs.
Possession	6 mos.-10 yrs.	7 yrs.	2 yrs.	5 yrs.
Possession w/prior	2 yrs. -20 yrs.	9 yrs.	4 yrs.	5 yrs.
Sale	5 yrs. -life	8 yrs.	3 yrs.	5 yrs.
Sale w/prior	10 yrs. -life	10 yrs.	5 yrs.	5 yrs.

Approved:

Fred Finsley, Chairman

ADULT AUTHORITY

By Joseph A. Sprangler
Administrative Officer

TABLE No. 5

**ADULT FELONY ARRESTS FOR NARCOTICS LAW VIOLATIONS IN
CALIFORNIA, 1952 TO FIRST SIX MONTHS OF 1960**

1952	4,944	1957	10,353
1953	6,612	1958	10,440
1954	7,457	1959	12,155*
1955	7,313	1960	6,957†
1956	9,140		

* Note: First six months of 1959 totaled 5,666.

† First six months.

SOURCE: Bureau of Criminal Statistics in the State Department of Justice.

TABLE No. 6

**HEROIN CONFISCATED BY POLICE DEPARTMENT
CLEVELAND AND LOS ANGELES
1952-1959**

	Cleveland ¹	Los Angeles ²
1952	16	70
1953	36	161
1954	28	89
1955	35	29
1956	17	44
1957	9	187
1958	4	194
1959	(17 capsules)	216

¹ Population: Cleveland—1950—914,808; 1960—869,728.

² Population: Los Angeles—1950—1,970,358; 1960—2,450,068.

NOTE: Los Angeles' Narcotic Squad numbered 27 officers in 1952, it was increased to its present size of 42 in 1955.

Cleveland's Narcotic Squad numbered eight officers in 1952, in 1954 the squad was increased to its present size of 13 officers.

TABLE No. 7

**CONVICTION RATE OF NARCOTIC OFFENSES STATE OF OHIO COURTS
BEFORE AND AFTER THE CHANGE OF LAW
1951 - 1954; 1956 - 1959**

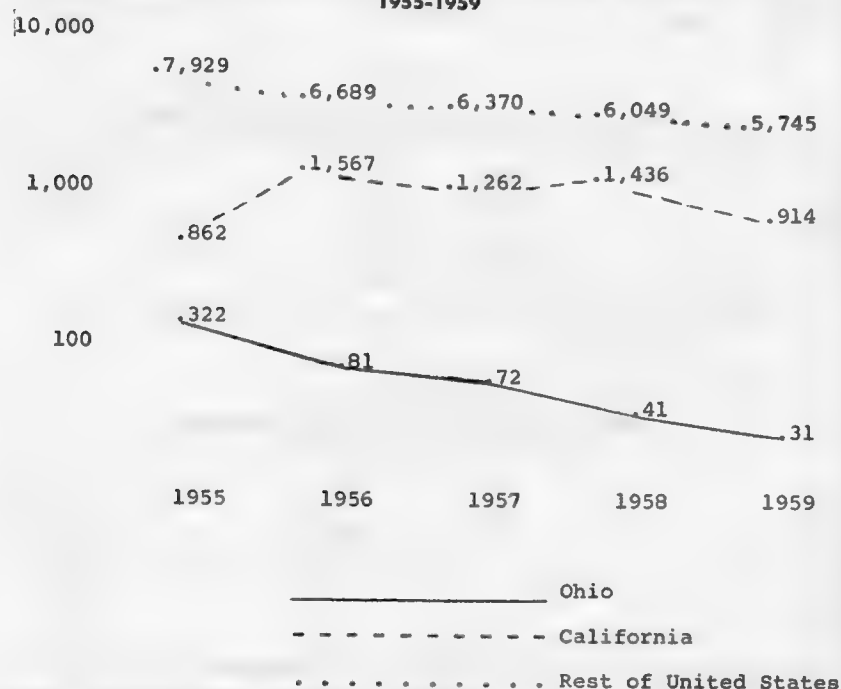
	<i>Number of Defendants</i>	<i>Convictions</i>	<i>Percent Convicted</i>
1951-1954 (Prior to law change) -----	638	526	82.4
1956-1959 (After law change) -----	829	674	81.3

NOTE: 1955 excluded as laws in question were put in effect during that year.

SOURCE: Ohio Judicial Criminal Statistics, 1951 to 1959; Bureau of Research and Statistics, Division of Business Administration, Ohio Department of Mental Hygiene and Correction.

TABLE No. 8

**NEW NARCOTIC ADDICTS REPORTED OHIO, CALIFORNIA, REMAINDER OF U. S.
1955-1959**



SOURCE: Department of Treasury, Federal Bureau of Narcotics.

TABLE No. 9

**NUMBER OF PERSONS CHARGED WITH NARCOTICS OFFENSE
IN STATE OF OHIO COMMON PLEAS COURT
1951-1959**

<i>Year</i>	<i>Cases Filed During Year</i>	<i>Year</i>	<i>Cases Filed During Year</i>
1951 -----	148	1956 -----	272
1952 -----	165	1957 -----	240
1953 -----	165	1958 -----	197
1954 -----	232	1959 -----	154
1955 -----	329		

SOURCE: Ohio Judicial Annual Statistics, Bureau of Research and Statistics.

**TABLE No. 10
DISPOSITION OF PERSONS CHARGED WITH SALE OF NARCOTICS
RECORDERS COURT, DETROIT, MICHIGAN
August, September and October, 1958**

	<i>Number of Persons</i>	<i>How Tried</i>			<i>Sentence Imposed</i>				<i>Medium Minimum Sentence</i>
		<i>Jury</i>	<i>Court (Pleaded guilty)</i>	<i>Prison</i>	<i>County Jail</i>	<i>Probation</i>	<i>20 years</i>	<i>3 years</i>	
Total persons charged -----	33	3	30	---	---	---	---	---	20 years
Persons convicted of sale -----	3	3	---	3 ^a	---	---	---	---	3 years
Persons for whom charge was reduced to possession -----	28	---	28	25 ^b	1 ^c	---	---	---	1 year
Persons for whom charge was reduced to addiction -----	1	---	1	---	1 ^d	---	---	---	County Jail
Persons for whom charge was dismissed -----	1	---	1	---	---	---	---	---	

^a One received 20-20½ years; one received 20-21 years; one received 20-30 years.
^b One received 12½-20 years; two received 8-10 years; one received 5-20 years; six received 5-10 years; one received 4-10 years; five received 3 or 3½-10 years; seven received 2 or 2½-10 years; two received 1-10 years.

^c Received five years probation and 90 days county jail.

^d One received two years probation; one received one year probation.

^e Received one year county jail.

POSSESSION FOR SALE STATUTES OF OHIO AND NEW YORK

I. OHIO

Page's Ohio Revised Code Annotated

"3719.20—Prohibitions

No person shall:

(A) Possess for sale a narcotic drug except in accordance with the provisions of sections 3719.01 to 3719.22, inclusive, of the Revised Code.

"3719.99—Penalties

(D) Whoever violates division (A) or (H) of section 3719.20 of the Revised Code shall be imprisoned not less than ten nor more than twenty years for the first offense; for a second offense such person shall be imprisoned not less than fifteen nor more than thirty years; for a third offense such person shall be imprisoned not less than twenty nor more than forty years."

II. NEW YORK

Clevenger-Gilbert, New York Criminal Code and Penal Law, 1960

"Section 1751. Violations of the public health law with respect to narcotic drugs.

2. Any person who shall possess or have under his control any narcotic drug, as defined in the public health law, with intent to barter or exchange with, or to sell or give to another the same or any part thereof, or to aid, abet, or directly or indirectly counsel, command, induce, or procure the barter or exchange with or the sale or gift to another or the same or any part thereof, in violation of any section of article thirty-three of the public health law, shall be punishable by imprisonment for an indeterminate term the minimum of which shall be not less than five years and the maximum of which shall be not more than 15 years.

Such intent is presumptively established by proof that the person knowingly possessed or had under his control, in violation of any section of article thirty-three of the public health law one hundred or more cigarettes containing cannabis, or one or more preparations, compounds, mixtures or substances of an aggregate weight of (a) one or more ounces, containing one per centum or more of the respective alkaloids or salts of heroin, morphine or cocaine; or (b) one or more ounces, containing any cannabis; or (c) two or more ounces, containing raw or prepared opium; or (d) two or more ounces, containing one or more than one of any of the other narcotic drugs as defined in the public health law. In determining said weight, avoirdupois ounces shall be used for solids or semi-solids and fluid ounces for liquids. This presumption may be rebutted.

3. Any person who shall possess or have under his control, in violation of any section of article thirty-three of the public health law, twenty-five or more cigarettes containing cannabis, or one or more preparations, compounds, mixtures or substances of an aggregate weight of (a) one-eighth ounce or more, containing one per centum or more of the respective alkaloids or salts of heroin,

morphine, or cocaine; or (b) one-quarter ounce or more, containing any cannabis; or (c) one-half ounce or more, containing raw or prepared opium; or (d) one-half ounce or more, containing one or more than one of any of the other narcotic drugs as defined in the public health law, shall be punishable by imprisonment for an indeterminate term, the minimum of which shall be not less than three years and the maximum of which shall be not more than 10 years. In determining said weight, avoirdupois ounces shall be used for solids or semi-solids and fluid ounces for liquids.

4. The presence in an automobile, other than a public omnibus, of any narcotic drug, in an amount equal to or in excess of that which is set forth in subdivision two of this section, and which under the provisions thereof would be presumptive evidence of its possession with intent to sell, shall be presumptive evidence of its possession and control, knowingly, in violation of section thirty-three hundred five or any other section of article thirty-three of the public health law by each and every person found in such automobile at the time such narcotic drug is found. Where one of the persons found in the automobile is authorized to possess the narcotics drugs so found . . . etc., said presumption of possession shall not attach. Nothing in this sub-division shall apply to a duly licensed physician . . . etc., nor to public officers or their employees . . . etc., nor to the driver of the automobile if he is a duly licensed driver . . . etc. This presumption may be rebutted.

5. Any person who shall be convicted of an attempt to commit any of the crimes set forth in this section and for which crime this section prescribes imprisonment for an indeterminate term with a specified minimum, shall be punishable by imprisonment for an indeterminate term the minimum of which shall be not less than half of the minimum prescribed for the commission of the crime itself, and the maximum of which shall be not more than half the maximum prescribed for the commission of the crime itself."

THE MICHIGAN EXCEPTION TO THE EXCLUSIONARY RULE

Art. II, Sec. 10, Michigan Constitution of 1908 as amended in 1935.

The person, houses, papers and possessions of every person shall be secure from unreasonable searches and seizures. No warrant to search any place or to seize any person or things shall issue without describing them, nor without probable cause, supported by oath or affirmation: *Provided, however, that the provisions of this section shall not be construed to bar from evidence in any court of criminal jurisdiction, or in any criminal proceeding held before any magistrate or justice of the peace, any narcotic drug or drugs, any firearm, rifle, pistol, revolver, automatic pistol, machine gun, bomb, bombshell, explosive, blackjack, slingshot, billy, metallic knuckles, gas-ejecting device, or any other dangerous weapon or thing, seized by any peace officer outside the curtilage of any dwelling house in this state.*

Italic: As amended in 1935.
Bold: As amended in 1952.

TABLE No. 11
**NUMBER OF SEARCH WARRANTS ISSUED IN SELECTED JUDICIAL DISTRICTS
 1955-1959**

Year	<i>Judicial Districts</i>			
	<i>Los Angeles Judicial District</i>	<i>Oakland- Piedmont</i>	<i>South San Mateo County Redwood City</i>	<i>San Diego</i>
1955-----	8	48	5	na
1956-----	11	30	3	na
1957-----	4	13	5	28
1958-----	28	9	4	43
1959-----	25	17	3	32
1960-----	8 (6/1)	16 (6/21)	-	33 (6/29)

^{na} Data not available.

San Francisco reported 7 search warrants since 1955.

Stockton reported no search warrants since 1955.

Santa Monica reported 5-6 in last ten years.

Long Beach reported 3-4 since 1955.

TABLE No. 12
**SENTENCES IMPOSED ON NARCOTICS OFFENDERS IN THE STATE OF OHIO,
 1960, AND CHANGES ADOPTED IN 1955**

Nature of Offense:	<i>Prison sentences imposed</i>	
	<i>Before 1955</i>	<i>Since 1955</i>
Administering narcotics to a minor-----	0-5 years	30 yrs.-Life
Illegal sale of narcotics-----	0-5 years	20 yrs.-40 yrs.
Inducing another to use narcotics-----	0-5 years	10 yrs.-25 yrs.
(2nd offense) -----		25 yrs.-50 yrs.
Possession for sale -----	0-5 years	10 yrs.-20 yrs.
(2nd offense) -----		15 yrs.-30 yrs.
(3rd offense) -----		20 yrs.-40 yrs.
Possession -----	0-5 years	2 yrs.-15 yrs.
(2nd offense) -----		5 yrs.-20 yrs.
(3rd offense) -----		10 yrs.-30 yrs.
Suspended sentence, probation and parole are available, except for conviction involving a minor.		

PART II

REPORT ON DANGEROUS DRUGS

JUNE, 1961

PART II

SPECIAL INTERIM REPORT ON DANGEROUS DRUGS
(June, 1961)

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LETTER OF TRANSMITTAL

STATE OF CALIFORNIA
SPECIAL STUDY COMMISSION ON NARCOTICS
June 2, 1961

EDMUND G. BROWN
Governor of the State of California
State Capitol, Sacramento, California

DEAR GOVERNOR BROWN: On March 22, 1960, the Special Study Commission on Narcotics was created by your Executive Order to study the narcotics problem in California. As this study progressed, it was brought to our attention that the use of dangerous drugs was closely tied in with the narcotics traffic. Evidence was presented to the Commission that the use of these drugs was replacing marijuana as the first step to the use of heroin. The dangerous drugs referred to include the hypnotics (Seconal, Nembutal, Amytal, Phenobarbital, and the other barbiturates) and the stimulant drugs from the Amphetamine group (Dexedrine, Benzedrine, etc.). These drugs are more commonly referred to by users as "bennies", "goof balls", "red devils", "blue heavens", "Mickey Finns" or "knock out drops", "yellow jackets", and "green dragons".

The most alarming fact brought to our attention was the sharp increase in the use of dangerous drugs by school children because these drugs are so readily available and accessible. In 1959, ten percent of the total arrests made by the Juvenile Narcotics Squad of the Los Angeles Police Department involved dangerous drugs. In 1960, this figure increased to 32 percent of all such arrests. In the first four months of 1961, 59 percent of all the arrests made by the Juvenile Narcotics Squad in Los Angeles involved dangerous drugs. Furthermore, the number of arrests in Los Angeles of juveniles for dangerous drugs violations has increased 468 percent since 1954.

That Los Angeles is not alone in this problem is indicated by statistics received from the San Diego Police Department concerning arrests made in that area which indicate that over half of the 1,054 arrests made by the Narcotics Detail in 1960 involved dangerous drugs (dangerous drugs, 601 arrests; marijuana, 207 arrests; heroin and other similar narcotics, 246 arrests). The Commission has not had the opportunity to study similar information which might be available in other parts of California.

While the majority of those persons who become addicted to heroin have poor school records and a history of criminal behavior prior to using narcotics, the Commission was advised by educators and law enforcement officials that the use of dangerous drugs has reached up to include school children with average grades with no prior behavior problems.

The Commission was informed that many practicing physicians are unaware of the dangerous consequences which can result from the use of these drugs over a period of time. The Commission was told that

there is evidence that persons using dangerous drugs prescribed for them by a physician have a higher death rate than non-users for each of the top ten causes of death. Contrary to popular belief, these drugs are habit-forming, addicting, and can cause brain damage or even death if used indiscriminately without close supervision.

The Commission was also advised that there is no requirement in the federal laws that records of stock on hand or purchase orders for dangerous drugs be kept or made available for inspection similar to the regulations which have proved so effective in controlling pharmacists and physicians in dispensing narcotics legally and properly. Without such records, the federal authorities concerned with this problem indicate they are, in effect, helpless in controlling the illegal traffic in these drugs. Representatives of the California Board of Pharmacy advised the Commission that new state laws providing for inventory controls and mandatory purchase order forms were indispensable before there can be any hope of halting the flood of such drugs on the illegal market.

The Commission was informed that, in a twenty-three day period, one million units of dangerous drugs of the stimulant variety were shipped from American drug manufacturers to Tijuana at the apparently regular wholesale price of 76 cents per 1,000 units. More recently, six hundred thousand units were shipped to a Mexican border town in three days. These drugs were in turn sold openly and without prescription to Americans, including teenagers, who brought them back into California.

Edmund G. Brown
Governor of the State of California

Under present California laws, the illegal possession and sale of dangerous drugs are misdemeanors. Since the dangerous drugs are potentially as harmful to the mind and body as is the use of narcotics, the punishment for illegal trafficking in such drugs should be the same as for an equivalent violation of the State Narcotic Act. In addition, a new crime prohibiting the illegal possession of dangerous drugs for sale should be created.

The Commission believes an urgent warning should be sounded to the medical profession, the general public, and especially parents, as to the serious consequences involved in the use of these drugs.

In this report, we have presented the evidence submitted to the Commission by representatives of federal, state, and local enforcement agencies documenting the need for remedial action on a federal and state level, together with our recommendations.

Respectfully submitted for the Commission,

HARRY M. KIMBALL, *Chairman*
WALTER S. BINNS
A. E. JANSEN
ROBERT NEEB, JR.
JOHN E. STORER

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ARTHUR L. ALARCON, *Project Director*
Special Consultant

SPECIAL INTERIM REPORT ON DANGEROUS DRUGS

The Governor's Executive Order creating the Special Study Commission on Narcotics called for a study of the *narcotics* problem in California. During the year which the Commission devoted to this study, it was brought to our attention that an alarming increase had been discovered in the use of dangerous drugs¹ among juveniles in California, especially in the Los Angeles Area.² These drugs are lethal and will cause death, addicting, habituating and readily available to juveniles and adults, and are regularly found in the illicit trade in connection with heroin and marijuana. Because of the problems of controlling and preventing the spread of narcotics addiction and the use and addiction to dangerous drugs are so closely connected and because of the disturbing evidence presented to the Commission which would appear to call for immediate remedial action, the Commission felt it would be remiss in fulfilling its responsibilities if it did not devote its attention to the study of this problem and endeavor to make appropriate recommendations based on its findings and conclusions.

Because the illegal use of dangerous drugs is potentially as harmful to the mind and body as is the illegal use of narcotics,³ the Commission has concluded that no distinction should be made between the illegal trafficking in dangerous drugs and in narcotics. The same penalties, regulations and controls should apply.

PRESENT CALIFORNIA LAW

Under the present California law, any person who has in his possession a hypnotic drug or an amphetamine or desoxyephedrine without a prescription is guilty of a *misdemeanor*.⁴

Any person who furnishes a dangerous drug to an adult, except upon a prescription, is guilty of a *misdemeanor*.⁵

Any person who furnishes a hypnotic drug to a adult without having first been issued a hypnotic license, is guilty of a *misdemeanor*.⁶

Any person who furnishes a hypnotic or a dangerous drug to a minor is guilty of a *felony*.⁷

Prescriptions for dangerous drugs may be refilled at any time upon the oral authorization of the prescriber or by the written authority on the original prescription (see B & P Code section 4229).

Each person licensed to furnish hypnotic drugs and all physicians, dentists, chiropractors and veterinarians are required to fill out a hyp-

¹ The dangerous drugs referred to throughout this report include the hypnotics (Secobarbital, Nembutal, Amytal, Phenobarbital, and the other barbiturates) and the stimulant drugs from the Amphetamine group (Dexedrine, Benzedrine, etc.). These drugs are more commonly referred to by users as "bennies," "goof balls," "red devils," "blue heavens," "Mickey Finns" or "knock out drops," "yellow jackets," and "green dragons."

² It should be noted that the commission was advised that the Los Angeles Police Department has the only *juvenile* narcotics squad in the State of California. This bureau was established by Chief William H. Parker in 1951. This problem may be on the upswing in other areas but is possibly, as yet, undiscovered because of a lack of trained law enforcement personnel assigned to this problem.

³ "Since it is now known that addiction to barbiturates is more dangerous to the physical well-being of the patient than is addiction to morphine, the same precautions should be used in prescribing barbiturates as are employed in dispensing narcotics." Isbell, Harris, M.D. (Chief, Addiction Research Center, National Institute of Mental Health, Public Health Service Hospital, Lexington, Ky.): *What to Know About Drug Addiction*, p. 8.

⁴ B. & P. Code section 4230.

⁵ B. & P. Code section 4227.

⁶ B. & P. Code section 4222.

⁷ B. & P. Code section 4234.

notices drugs purchase order form in triplicate (furnished by the Board of Pharmacy) for each order of such drugs from a supplier. The original and duplicate orders must be forwarded to the supplier.⁸

Any person who forges, alters or increases the quantity of dangerous drugs in any prescription, or issues a forged prescription, or who obtains any dangerous drugs by such a prescription, is punishable by a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) for a first offender, and for each subsequent offense shall be imprisoned in the county jail for not less than six months, nor more than a year, or in the state prison for not more than six years.⁹

The California law does not require an inventory control for *dangerous drugs* similar to the requirement for *narcotics*, set forth in Division 10 of the California Health and Safety Code and under the Federal Narcotic Law (see Regulations No. 5). These sections require that a record be kept of each narcotic transaction and that such records shall be open for inspection to officers of the Bureau of Narcotic Enforcement and the Board of Pharmacy.

PRESENT FEDERAL LAW

The present federal law controlling the illegal dispensing or trafficking in dangerous drugs applies solely to such drugs shipped in interstate commerce.¹⁰ There is no inventory control under the present federal law, nor is there any requirement that copies of purchase orders of these drugs be made available for inspection by the appropriate government agencies.

ASSESSMENT OF THE PRESENT DANGEROUS DRUG PROBLEM IN CALIFORNIA

The Commission had the benefit of the expert opinion of federal, state, county and local enforcement officers concerning the status of the present *dangerous drugs* problem in California. These officers were unanimous in the conclusion that this problem is one of great concern to law enforcement because the use of dangerous drugs is increasing at an alarming rate, especially among juveniles who were not the type usually involved in the use of *narcotics*. Furthermore, the Commission was advised that there is substantial evidence that the use of dangerous drugs by teenagers has become the first step towards addiction to heroin (rather than marijuana as was the case prior to last year).

The Commission believes the following facts clearly demonstrate the extent of this problem and the need for immediate remedial action.

1. LACK OF CONTROL OF SOURCE OF SUPPLY

The Commission was advised by the California Board of Pharmacy that huge quantities of dangerous drugs manufactured by *American* drug firms end up in Mexican border towns where they are sold across the counter *without* prescription to American consumers, including juveniles. These drugs are sold by the manufacturer at a cost of 76 cents a thousand units. They are peddled on the illegal market for

⁸ B. & P. Code section 4224.

⁹ B. & P. Code section 4237.

¹⁰ See Title 21, USCA, Sections 331, and 351 to 357.

10 cents a unit, or at better than a thousand percent profit. Recently, one million units were delivered in Tijuana from one American drug firm in 23 days. 600,000 units from another American firm were delivered to the same Mexican border town over a period of three days.

In the 1960 fiscal year, the United States Customs Service seized 33,635 units of dangerous drugs which had been purchased in Mexico and smuggled into the United States from Tijuana, Tecate, and Calexico.

The Commission was advised that anyone desiring to purchase dangerous drugs from a drug manufacturer in large quantities may do so by sending an order through the mail using the name of a practicing physician or of a fictitious practitioner. Such orders are filled by out-of-state drug manufacturers apparently without any challenge or investigation as to the authenticity of the signature or any determination as to whether the person whose signature is affixed to the purchase order is, in fact, a doctor or an authorized person with legitimate reasons for ordering drugs. Since our federal laws do not presently require that any record be kept or that the federal government receive a duplicate of any purchase order, no effective control exists for such illegal trafficking in dangerous drugs. The Commission was advised that the Federal Food and Drug Administration is extremely handicapped in enforcing the laws against illegal smuggling of drugs and in policing the drug industry.

At the present time, the Food and Drug Administration can only operate by working the field arresting users of dangerous drugs. The Federal Food and Drug investigator then tries to work backwards from the user trying to catch the supplier or peddler who is furnishing drugs illegally. Since interstate shipment must be proved, and since no records are available for inspection by the federal government, such as provided by the Federal Narcotics Law under the Harrison Act, by which such a shipment could be proved with documentary evidence, the federal government must rely on circumstantial evidence to prove its case. This burden of proof can only be overcome by presenting evidence of a scientific comparison of the punch marks on the smuggled drugs, which occur when they are stamped out at the factory, with sample drugs obtained by federal agents from the manufacturers. Preparation of such evidence for presentation in court is costly, and time consuming, extremely difficult and ties up the available time of the enforcement officer.

2. IGNORANCE OR LACK OF KNOWLEDGE AS TO THE DANGER OF THESE DRUGS

The Commission was advised that many doctors who prescribe dangerous drugs do not understand the true properties of these drugs and their effect on their patients. For example, the Commission was advised that there is some evidence that persons who are using tranquilizers die at a higher rate than non-users in each of the top ten causes of death. This may be due to the fact that those persons who are more seriously ill are furnished tranquilizers. The fact remains that adequate information is not available for the doctor concerning these drugs, nor is any independent research being conducted by a

university or by a public agency to test the claims of the drug manufacturers.

Strong evidence of the seriousness of the dangerous drug problem and the lack of effective controls on distribution or accurate information concerning the effects of these drugs can be found from the study of statistics concerning the number of deaths connected with their use. According to information received from the California Board of Pharmacy, 383 persons were reported as having died from the use of barbiturates between July 1, 1959, and June, 1960. Of this group, 81.5% (312) were suicides, and 18.5% (71) were accidental. Thirteen persons died from a mixture of alcohol and barbiturates. Of this group, 8 (61.5%) were accidental, and 5 (35.5%) were suicidal.

The Commission was advised that these dangerous drugs have a definite detrimental effect on the ability to drive. The hypnotic drugs cause drowsiness and lessen the ability to coordinate and reduce the ability to react to sudden peril. It is believed by law enforcement that many traffic accidents are being caused by persons driving under the influence of these drugs, without having been advised by their physicians as to the danger involved. Prosecution of such persons who have caused a traffic accident because of reckless driving is difficult since the evidence has been consumed and scientific tests through breath or blood samples are inconclusive unless the driver has taken a large quantity.

A related problem in the field of law enforcement arises when the driver has been drinking at a time when he also has taken a dangerous drug. While the user of heroin rarely drinks, one of the dangerous features involved in the consumption of dangerous drugs is the fact that, if such drugs are combined with alcohol, intoxication occurs more rapidly. If he conceals the fact that he has used drugs from the police and is tested chemically for the amount of alcohol in his blood system, he may "beat" the test and avoid responsibility for his misconduct, although his driving ability was, in fact, impaired due to his use of drugs and intoxicating liquor.

A special problem has developed because of the use of dangerous drugs by long-haul truck drivers and bus operators. These drivers take the amphetamines (benzedrine, dexedrine, dexamyl, etc.) to keep from falling asleep on the road. However, these drugs have been found to cause hallucinations in drivers who have gone for a long period of time without sleep. The effects of the drugs, coupled with a loss of sleep, causes them to drive erratically because of imaginary hazards which appear on the highway. The worst traffic accident in Arizona's history occurred in 1959, resulting in nine deaths and a large number of seriously injured passengers. This accident involved a collision between a truck and a bus. It was caused by a truck driver who was driving under the influence of a large dosage of benzedrine. In addition, the driver had not had any sleep for 49 hours.

Many persons, especially teenagers, do not realize that some of the dangerous drugs are habit forming and addicting in the physiological sense with a tolerance factor and pronounced withdrawal symptoms and after-effects, in some cases more severe than those from heroin. The Commission was also advised that innocent housewives are becoming addicted to these drugs because of the ease of obtaining them from

physicians who prescribe them indiscriminately. Further, the Commission was informed by representatives of the California Board of Pharmacy that some of these drugs, when used improperly can cause physical deterioration, severe brain damage, or even death.

It should be noted that the California law does not require that students be taught anything concerning dangerous drugs.

It was reported to the Commission that some students found unconscious because of an overdose of barbiturates do not recover consciousness for days.

3. MAGNITUDE AND GRAVITY OF THE DANGEROUS DRUG PROBLEM

The Commission was advised by the state, county and city officials interviewed that the use of dangerous drugs by juveniles has increased rapidly since September, 1960. Statistics furnished to the Commission by the Los Angeles Police Department show that, prior to 1960, only about 10% of the total juvenile arrests by the Los Angeles Police Department's Juvenile Narcotics Squad were for the use or possession of dangerous drugs (see Chart No. 1, App. p. 22). Between September, 1960, and March, 1961, arrests for use and possession of dangerous drugs have increased to 53% of the total for heroin, marijuana and dangerous drugs. In 1959, 69 juveniles were arrested for the use of dangerous drugs. In 1960, 210 juveniles were arrested on this charge. In the first four months of 1961, 167 juveniles have been arrested for drug use (see Chart No. 2, App. p. 23). In 1959, dangerous drug arrests accounted for approximately 10% of all arrests by the Juvenile Narcotics Squad. In 1960, this figure increased to 32% of all such arrests. *In the first four months of 1961, 59% of all the arrests by this division involved dangerous drugs. Between 1954 and 1960, the number of arrests for dangerous drugs offenses has increased 468%.* The Commission was advised that these figures represent only a sampling of the total use of dangerous drugs among teenagers. Because of a lack of sufficient manpower, only the surface of the dangerous drug problem has been scratched. Captain Glavas of the Juvenile Narcotics Squad, Los Angeles Police Department told the Commission that the number of arrests for dangerous drugs depends on the number of man hours the police can devote to enforcing these laws.

Additional proof of the grave nature of the dangerous drug problem in California can be obtained from a study of the 1960 statistics of the San Diego Police Department's Narcotic Detail. In 1953, there were approximately 60 arrests involving dangerous drugs. In 1960, there were over 601 arrests for dangerous drug violations. In 1956, dangerous drug arrests accounted for one-third of the total arrests for marijuana, heroin, and dangerous drugs. In 1960, over half of the arrests made by the Narcotic Detail were for dangerous drug violations (see Chart No. 3, App. p. 24). In 1960, the San Diego Narcotic Detail processed 1,054 arrests. Over half of these arrests involved dangerous drugs (dangerous drugs, 601 arrests; marijuana, 207 arrests, heroin and all other similar narcotics, 246). Of the total number of persons arrested in 1960 by the Narcotic Detail for crimes involving *possession* of dangerous drugs, marijuana, or heroin and similar narcotics, 541 persons were arrested for possession of dangerous drugs. Less than half of this number were arrested for possession of marijuana and heroin (203 arrests for mari-

juana possession and 44 for possession of heroin). In 1960, the San Diego Police Department seized 36,306 units of dangerous drugs.

Statistics compiled by the Bureau of Criminal Statistics, in the nine month period between October, 1959, and July, 1960, show that there were 1,957 arrests in the entire state of California for violations of the dangerous drug laws. 1,236 of these arrests took place in the Los Angeles area.

So many adults and parents use amphetamine, barbiturates, as well as other similar medicines legally under a doctor's prescription, that there is no stigma attached to the use of dangerous drugs, and many juveniles consider the use of these drugs as socially acceptable.

The most alarming and disturbing fact revealed to the Commission is the type of children who are becoming involved with the use of dangerous drugs.

The majority of juveniles arrested for narcotics violations have had a previous record for delinquent behavior; however, many of the children arrested for the use of dangerous drugs have no history of delinquent behavior.¹¹

As one law enforcement officer expressed this point to the Commission, the use of heroin and marijuana is usually confined to the student who is "flunking out" or who drops out of school. However, the use of dangerous drugs has spread to the average student, and to those who have not been behavior problems in school prior to their use of such drugs.

In order to illustrate graphically the disturbing nature of this problem, the Commission has set forth a brief summary of the following cases taken from police reports of the Los Angeles Police Department. These cases all occurred since August, 1960.

a. Female, age 15, ninth grade, junior high, Pacoima, California. Officers were summoned to a receiving hospital where the subject was being treated for "probable overdose of barbiturates". Subject was unconscious—unable to give a statement. Subject had been found unconscious in Pasadena. The following day, officers returned and found subject intermittently conscious. She stated she had taken "yellow jackets" but never more than 10 at one time before. Someone had dared her to take more and she did. Subject became sleepy and was unable to finish the interview.

b. Male, age 13, eighth grade, junior high, Los Angeles, California. Officers were summoned to Olympic and Figueroa where a witness advised them that the subject had staggered out into the street in front of his car and appeared to be drunk. Subject's eyes were dilated, his speech thick, and he was staggering. Two tuinol capsules were found in his pocket. Subject stated he had taken some "red devils" and "ben-nies" that night. Subject stated he threw away a box containing several hundred pills just before his arrest. The pills were obtained from an adult.

c. Female, age 15, tenth grade, high school, Los Angeles. Subject came to the attention of the police when she was found unconscious in a vacant lot on Normandie Boulevard near the harbor area. Officers were summoned to the scene by witnesses who had seen two boys and a girl drag the subject and another girl from an automobile and leave

them in the vacant lot. Subject was taken to the Harbor General Hospital where she was treated for ingestion of four capsules of Seconal. Officers apprehended the two boys, one age 17, the other age 15, and one girl age 15, referred to above, near the scene. Seventy-five Seconal capsules and four Benzedrines were found in the car. Subject stated she obtained her first drugs (Seconal) at a Halloween dance. The day before her arrest, she obtained two "red devils" (Seconal) from a girl at school. That same day she obtained seven more from a boy for \$1.00 (on credit). She paid back the two to the girl at school. She then received seven more from another school friend. That night, she took four while baby sitting and went to sleep. The following morning after being taken home by her mother, she was too groggy to go to school so she "ditched" school. She took four more capsules during the day. She had no memory of being in a car with boys or being taken to a vacant lot. She stated she was unaware of the danger of the drugs and took them out of curiosity and because of tensions with the family.

d. Female, age 15, tenth grade, high school, Los Angeles. Subject was found unconscious by the police in a vacant lot on Normandie Boulevard near the Harbor area with the girl referred to above. Subject stated she had been taking "red devils" at parties for about a year and one half. Subject stated that, on the previous day, she had purchased three "red devils" and two benzedrines from a 15 year old boy at school. On the morning of her arrest, she purchased five dollars worth of "red devils" (34 Seconal capsules). She consumed five Seconal capsules and two benzedrine tablets prior to losing consciousness. She was taken to the Harbor General Hospital in "critical" condition. Subject stated she started using drugs because "everyone else was doing it" and she wanted to see what they were like.

e. Female, age 16, Youth Authority Ward—escapee from Ventura School for Girls—home, Van Nuys, California. Subject was arrested in an automobile along with three older persons, a female 16, was found unconscious in the rear seat, and a male 21, was in a stuporous condition. Subject lost consciousness in the Van Nuys Juvenile Bureau and was transferred to the Van Nuys Receiving Hospital—where efforts to revive her failed. Subject was interviewed the following day. She was still groggy. She stated she had been taking drugs for several weeks—up to 20 units a day. Just prior to her arrest, she swallowed eight benzedrine tablets and 10 to 14 Seconal capsules in an attempt to destroy the evidence and evade arrest.

f. Female, age 16, junior high, ninth grade, Los Angeles. Subject was arrested as a burglary suspect while traveling in a bus with two male companions. When the police approached, she was observed trying to hide 18 marijuana cigarettes behind the bus seat. Subject was taken to her apartment. There, she stated she was a heroin addict and produced an addict's hypodermic outfit. Two additional marijuana cigarettes were found in the apartment. At the police station, seven benzedrine tablets were found rolled up in the cuff of the subject's sweater sleeve. Subject stated she had used marijuana since she was 12 years old; that she had used dangerous drugs, including Seconal, Nembutal and benzedrine. She began using heroin at 15 and, at the time of her arrest, was using five capsules of heroin a day. Subject stated she could

¹¹ Letter to the commission from the Los Angeles Police Department, April 8, 1961.

purchase heroin by the ounce at any time. She stated she sold dangerous drugs to girls between the ages of 12 and 16.

g. Male, age 17, school experience (could not be determined due to subject's condition) Los Angeles, California. Subject was arrested because he was in violation of the curfew laws and for driving at an excessive speed. Subject appeared rational at the time of arrest, but soon lost consciousness. Subject was taken to the General Hospital in a coma. His companions, a female, age 15, and a male, 17 years, stated that the subject had purchased 18 Seconal capsules that day for three dollars. Prior to being stopped by the police, the subject swallowed 12 Seconal capsules. His 15 year old companion swallowed seven Seconal capsules, just prior to the arrest, and the 17 year old swallowed 12. Subject was still in critical condition and in a coma the following day and could not be interviewed. The police were informed that the subject would be unable to speak to the officers for three or four days.

h. Male, age 17, junior high (last school attended), Los Angeles, California. Subject was arrested for operating a motor vehicle under the influence of Seconal. Subject failed to stop at a boulevard stop at a speed of 30-35 m.p.h. and struck a parked vehicle. When subject was removed from his car, he staggered, could not maintain his balance, and gave the appearance of being highly intoxicated. Subject was given an intoximeter test which indicated that the subject had not been drinking alcohol. When the subject was interviewed on the following day, he stated he had taken his mother's car without her permission. He picked up two friends who offered to furnish the gas so that they could "cruise" around Los Angeles. Subject took his friends to a man who sold them \$3.00 worth of "reds". Subject took five "reds" (Seconal). According to the subject, this was the first time he had taken Seconal. Subject was on probation for using marijuana.

i. Male, age 17, high school (last school attended), Torrance, California. Subject was a passenger in an automobile involved in an automobile accident. The car in which subject was riding crossed over double line, struck another vehicle and drove off without stopping to render aid. While trying to escape, the automobile struck a telegraph pole and rammed a brick wall. Subject was found unconscious because of an overdose of drugs. Subject had no memory of being involved in an automobile accident nor was he aware of anything which occurred from the previous afternoon at the time of the interview. One of subject's companions stated that 50 pills had been hidden by the subject prior to the arrival of the police. Marijuana debris was found in the subject's pants pockets and pants cuffs.

j. Male, age 17, high school, B-12, Los Angeles, California. Subject came to police attention after he was found unconscious in a high school gym class. A search was made of the subject's car and one Nembutal capsule was found under the floor mat, and 44 Nembutals were found in the trunk of the automobile. Subject stated he purchased eight "yellows" (Nembutal) for one dollar, two weeks before he was arrested. Three days before his arrest, he purchased \$5.00 worth of "yellows". Subject furnished Nembutal to a classmate who had been found unconscious at school five days before subject's arrest.

k. Male, age 17, senior high, B-12, Los Angeles, California. Subject was found unconscious in the boys' locker room at his high school.

After regaining consciousness, subject stated he had purchased eight or nine "yellow jackets" in school during that morning for one dollar. Subject took four during nutrition and four or five during gym. Subject stated he "passed out" while playing basketball. The boy's vice-principal stated that subject was not a problem at school and had been helpful by engaging in school projects after hours.

l. Male, age 17, high school, A-12, Los Angeles, California. Subject was taken into custody in possession of 139 capsules of Seconal. Upon his arrest, subject made the following statement:

"I haven't toked up [used] for about a year, never did drop reds, I am a pusher. I started pushing reds at school in November. After school, I deal at ----- and ----- (an intersection in East Los Angeles). I make the guys I deal with at school tell me what they want the day before, because I don't want to hold any extra. Most of the deals at school are for one roll, six for \$1.00, but on the corner I sell as much as \$10.00 worth, 60 for \$10.00. This is the way I work at school. I deal with one half of my customers during nutrition, the other half during lunch. I buy a bag of popcorn put one or two rolls in the bag and offer my customer some popcorn. I've pulled this in front of the teachers every day. When I deal on the corner, the guys tell me when they are coming down, they pick me up in their cars and we make a deal, anywhere from \$1.00 to \$10.00 worth. I get the bread [money] first then I walk past the car kneel down like I'm fixing my shoe, drop the stuff and walk away. I score [purchase] for a jar at a time, usually 1,000 in a jar, and I make two or three hundred dollars profit on each jar."

At the time of his arrest, subject was on probation for a narcotics violation and awaiting a hearing for the possession of dangerous drugs.

A recent arrest made by the Los Angeles Police Department illustrates the problem of the availability of the drugs to our teenagers and the inadequacies of our present laws to control the illegal traffic in dangerous drugs.

On May 1, 1961, following two anonymous telephone complaints that the owner of a hot dog stand was selling pills to juveniles, police officers went to the hot dog stand to investigate. The suspect was told that a complaint had been made that he was selling pills to juveniles. The suspect stated he had given up peddling because he had found out the police were watching him. He stated he had only a few "ben-nies" for his own use. He then handed them a package containing 50 benzedrine units stating that this was all he had. A careful search of his clothing revealed a bottle which contained numerous benzedrine, dexedrine and Nembutal units. A search was conducted of defendant's residence which produced a paper sack containing two bottles of dexedrine, three bottles of benzedrine, and one bottle of Nembutal. A second paper bag was found containing numerous cellophane packages, each containing a small number of pills (Nembutal, Seconal or benzedrine). The suspect was then asked if he had any more pills. He then pulled up the pants leg of his left leg and removed a leather pouch which was strapped below his knee. This pouch contained numerous packets of pills and capsules. He then pulled his pants leg above his knee and

removed a second leather pouch which also contained numerous packets of pills and capsules. Approximately 3,000 units of benzedrine, dex-amyl, Seconal, Tuinal, and Nembutal were seized.

It should be noted that this suspect can only be charged with a misdemeanor—possession of dangerous drugs.

The Commission was advised that the recent sharp increase in the use of dangerous drugs is probably due to the following reasons:

- a. As pointed out above, there is a lack of understanding as to the potentially harmful effects of such drugs on the body and the mind.
- b. The ease in which dangerous drugs can be obtained in California and in border towns such as Tijuana, Mexico.
- c. The use of dangerous drugs is more socially acceptable than the use of narcotics. It is not a crime to be addicted to these drugs.
- d. These drugs are easy to dispose of in case of impending arrest (by ingestion) and their presence in the human body is difficult to detect by present scientific means. On the other hand, marijuana is difficult to swallow and its smoke is easily detected.
- e. Illegal possession of dangerous drugs is only a misdemeanor. Possession of narcotics is a felony (unless, under present law it is reduced to a misdemeanor by sentence).
- f. Sale of dangerous drugs to an adult is only a misdemeanor.
- g. The crime of sale of dangerous drugs to a minor is difficult to prove.
 - (1) Ordinarily, the courts do not consider it to be in the best interests of a minor to use him as an undercover operator. Some judges feel that to use a minor to obtain evidence against a peddler may well contribute to the delinquency of the minor.
 - (2) It is difficult to prove by means of an expert witness, that symptoms described by a minor were caused by a dangerous drug, since these same symptoms are also common to other causes such as alcohol and the use of marijuana.
 - (3) The most convincing evidence, of the furnishing of a drug to a minor, the drug itself, has been consumed by the minor.
- h. If it is necessary to use an officer to trap a peddler who is selling drugs to minors, the defendant can only be prosecuted for a misdemeanor, selling dangerous drugs to an adult.
- i. Some judges do not fully realize the seriousness of this problem and consequently have given out minor punishment in cases involving major peddlers. So long as the risk of stern punishment is very small, there can be no deterrent to unscrupulous persons who are seeking to engage in a very lucrative business.
 - (1) Recently, the Sheriff's office in Los Angeles County arrested four defendants who were engaged in the sale of dangerous drugs. Sheriff's deputies working undercover, purchased a total of 4,050 units of Seconal for \$230.00. On the arrest of these defendants, the Sheriff's office seized

29,175 units of benzedrine, 900 dexamyl tablets, a total of 4,425 units of Seconal. Suspect No. 1 who made direct sales to the Sheriff's deputies and was charged with two counts of sale, received a 90 day jail sentence.

Suspect No. 2, participated in the preliminary negotiations for these two sales, and made one direct sale herself outside the presence of her accomplices, received a \$50 fine.

Suspect No. 3, who had 200 amphetamine tablets and 100 Seconal capsules in her possession at the time of her arrest, received a \$50 fine.

Suspect No. 4, who was in possession of over 29,000 dangerous drugs at the time of his arrest, received a sentence of 15 days in the county jail. Each was charged with a misdemeanor.

- (2) In 1958, a Los Angeles doctor was convicted by a jury in the federal court on 20 counts for illegally dispensing dangerous drugs. Investigation into the doctor's conduct was commenced in 1955 by the United States Food and Drug Administration, the Bureau of Narcotics Enforcement, and local police agencies. Over 100 purchases of dangerous drugs were made by federal, state, and county officers working undercover. This doctor conducted a cursory physical examination of those who came to him for drugs. The "patient" was then asked if he wanted "reducers" (drugs for reducing purposes) or "sleepers" (barbiturates). The doctor's nurse testified that 8,000 pills were sold weekly at 10 cents a pill. Undercover agents who were extremely thin, asked for and received reducing pills. One Sheriff's deputy who received "reducers" was 5' 11½" and weighed 136 pounds. A staff member was on duty at the office on holidays and weekends, dispensing pills up to 10:30 P.M. to anyone who was a "patient". Some of the regular "patients" received an average of 12 pills daily for several months without any medical examination, discussion of symptoms, or other checks of his need for medication. The doctor was given a \$100 fine for each of the 20 counts for which he was convicted; however, the imposition of these fines was suspended. The doctor was not placed on probation, and the court expressly stated that no moral turpitude was involved in these crimes. This doctor is practicing medicine in Los Angeles at the present time.

RECOMMENDATIONS

FEDERAL LAWS

The Commission recommends that the President and the Congress of the United States be urged to consider favorably the enactment of legislation to assist the Federal Food and Drug Administration in its efforts to control the illegal traffic in dangerous drugs. Such legislation should include the following:

1. Illegal *intrastate* trafficking in dangerous drugs should be made a federal offense because the regulation of intrastate commerce in dangerous drugs is essential to the effective regulation of interstate commerce in such drugs because of the fact their place of origin ordinarily cannot be determined in the form in which they are consumed.
2. Such legislation should include a requirement that records be kept by any manufacturer or processor of dangerous drugs of the kind and quantity of such drugs manufactured, compounded or processed.
3. Complete records of all stocks of barbiturates and amphetamines on hand be maintained by every person engaged in manufacturing, processing, or otherwise disposing of such drugs, subject to the inspection of the federal officers responsible for the enforcement of the laws regulating dangerous drugs.
4. Such federal legislation should also require that every person selling, delivering or otherwise disposing of such drugs shall prepare or obtain a record of the kind and quantity of such drugs sold, delivered or otherwise disposed of, together with the name and address of the person from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction. All such records should be required to be available for inspection and copy by the appropriate federal agents.
5. No dangerous drugs should be sold without a signed federal purchase order form, a duplicate of which must be sent to the appropriate federal agency. (See H. R. 3967 introduced February 7, 1961).

CALIFORNIA LAWS

The Commission recommends that legislation be enacted to permit the appropriate state agency to maintain a complete inventory control over all dangerous drugs. Existing state laws are inadequate to cope with the problem. Such legislation should include the following:

1. A requirement that complete records be kept of all stocks of dangerous drugs on hand, subject to the inspection of the appropriate state agencies.
2. No dangerous drug should be sold, except on a purchase order form similar to the form required for the purchase of a hypnotic drug under section 4224, California Business and Professions Code. Such form should include the date, name of supplier, name

and quantity of drugs ordered, and the signature and address of the person making the purchase.

3. All pharmacists or any other person authorized to sell or dispense drugs should be required to keep a record of the kind and quantity of such drugs sold, delivered, or otherwise disposed of, together with the name and address of the person from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction. Any such records should be required to be available to officers of the appropriate state agency.
4. A new crime should be created prohibiting the illegal possession of dangerous drugs for the purpose of sale. Such a crime should be a felony.
5. The illegal sale or furnishing of a dangerous drug to an adult should be a felony.
6. The Commission makes no specific recommendation as to the exact punishment for crimes involving dangerous drugs. While the Commission believes that all of these offenses should be treated as serious felonies because of the great harm which can result from the illegal use of dangerous drugs (some of these drugs are as harmful to the body as heroin¹²), the exact terms and nature of the penalties which should be imposed should be determined by legislative study after consultation with law enforcement officials and other qualified experts. Such punishment should be fair, just, and reasonable, but stern and severe enough to act as a deterrent against the commission of crimes involving dangerous drugs.
7. The Commission was advised that, under the present California law, some persons are obtaining large quantities of drugs by filling in prescriptions for such drugs where the prescriber has neglected to indicate that the prescription should *not* be refilled. The Commission believes that all practitioners should be vigilant to insure that their patients are not given the opportunity to alter a prescription.

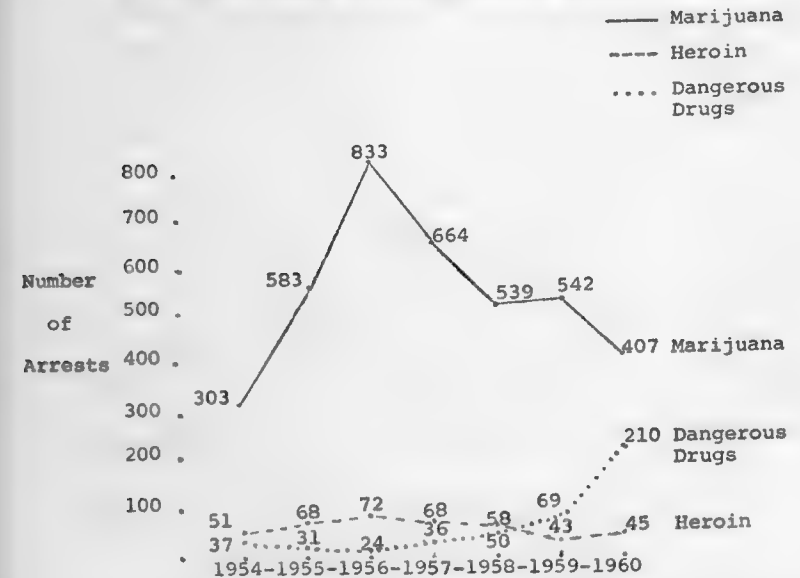
The Commission also believes that prescriptions for dangerous drugs should be non-refillable as is the case with narcotics (see Health and Safety Code, section 11275).

¹² "Abrupt withdrawal of barbiturates from addicted persons is followed by severe and dangerous signs of abstinence. Initially, the symptoms of intoxication abate and the patients appear to be improved. They then become nervous, restless, apprehensive, feel weak and may vomit. Finally, tonic-clonic convulsions occur resembling those of grand mal epilepsy. The number of convulsions varies greatly. Some patients escape seizures entirely; others have one or two convulsions, and a few may have repeated convulsions. After convulsions have ceased, patients may recover without further incident or they may develop a psychosis which resembles alcoholic delirium tremens. The delirium usually begins and is worse at night; it is characterized by disorientation in time and place but usually not in person. Vivid hallucinations, usually visual but sometimes auditory, are present. Untreated delirium may persist from 2 to 60 days. During the delirium, fever, elevation of the NPN and transient albuminuria may occur. Blood pressure is elevated and pulse and respiratory rates are increased. Like abstinence from morphine, abstinence from these hypnotic drugs is a self-limited condition and patients recover completely, provided they are sufficiently protected and not allowed to become dangerously exhausted." Isbell, Harris, M.D. (Chief, Addiction Research Center, National Institute of Mental Health, Public Health Service Hospital, Lexington, Ky.): *What to Know About Drug Addiction*, p. 6.

APPENDIX

CHART No. 1

**JUVENILE ARRESTS FOR MARIJUANA, HEROIN AND DANGEROUS DRUG OFFENSES
BY THE LOS ANGELES JUVENILE NARCOTIC SQUAD 1954-1960**

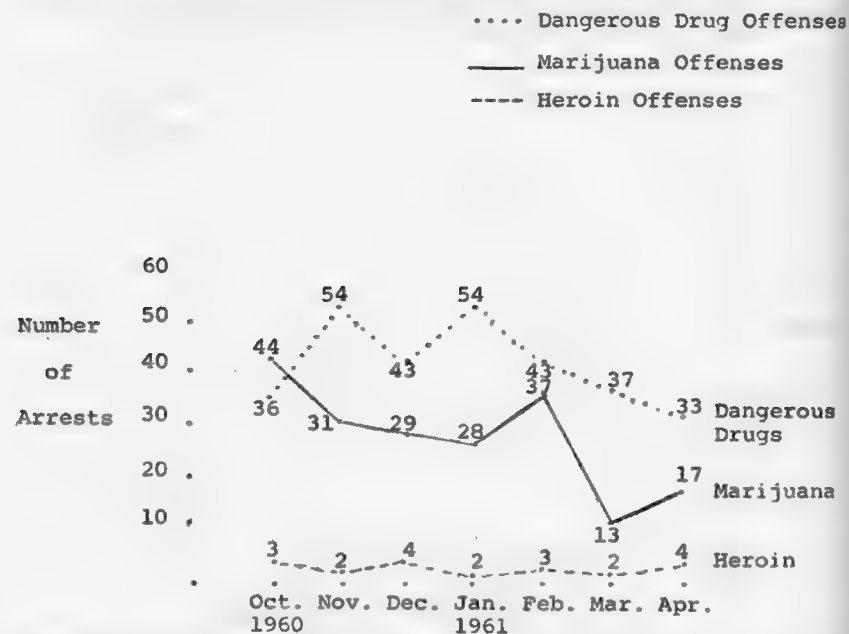


Source: Los Angeles Police Dept.
Juvenile Analytical Dept.

NOTE: This chart demonstrates that a drastic increase in the number of dangerous drugs arrests among Los Angeles teenagers has occurred during the past decade. In 1954, there were fewer arrests for dangerous drug violations than there were for either marijuana or heroin. From 1954 through 1958, there was no marked change in the number of arrests which involved dangerous drugs. During 1959, the number of dangerous drug arrests increased and surpassed the arrests for heroin offenses. During the first four months of 1961, the number of dangerous drug arrests have increased to a point that they currently constitute almost two-thirds of all arrests.

CHART No. 2

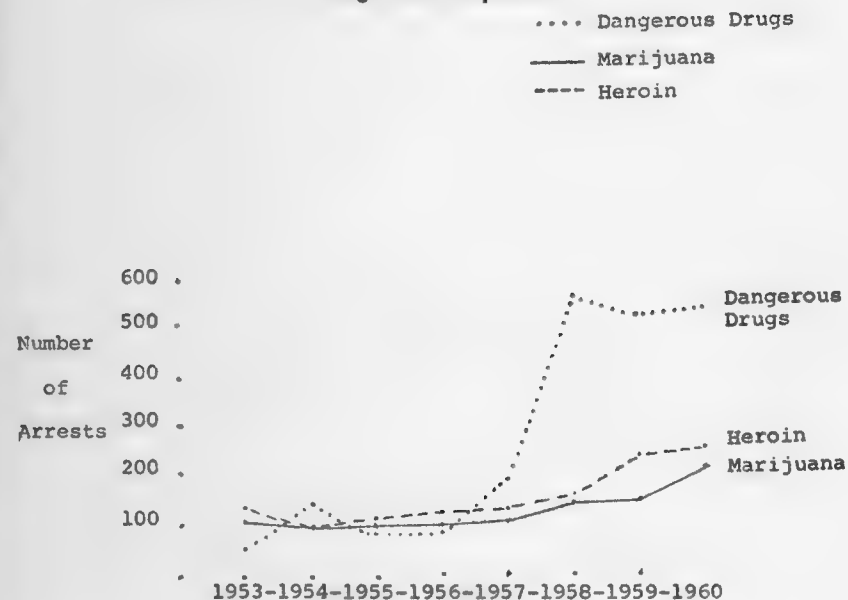
**JUVENILE ARRESTS FOR DANGEROUS DRUGS, MARIJUANA AND HEROIN
OFFENSES LOS ANGELES JUVENILE NARCOTIC SQUAD
October-April 1960-1961**



NOTE: During the last two months of 1960 and the first four months of 1961, the arrests by the Los Angeles Juvenile Narcotic Squad for dangerous drug offenses have exceeded the arrests for heroin and marijuana offenses combined. During the first four months of 1961 the Los Angeles Juvenile Narcotic Squad has made 167 arrests for dangerous drug offenses, 95 arrests for marijuana offenses and 11 arrests for heroin offenses. At this rate the number of dangerous drug arrests in 1961 will more than double the dangerous drug arrests of 1960.

CHART No. 3

**NARCOTICS ARRESTS FOR YEARS 1953 THROUGH 1960
San Diego Police Department**



PART III

FINAL REPORT

JUNE, 1961

PART III
FINAL REPORT
(June, 1961)

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RECOMMENDATIONS

The Special Study Commission on Narcotics respectfully submits the following recommendations:

1. That a special program be launched by the California State Department of Education to improve the quality of the training and the materials available for teachers who teach about narcotics and dangerous drugs. The Commission was advised that teachers throughout the State of California are receiving inadequate preparation to teach these subjects.

2. That Section 20456 of the California Education Code be amended to require that instruction be given in teacher's training classes in all accredited colleges and universities as to the best methods of teaching the nature of alcohol, narcotics *and dangerous drugs* and their effect upon the human system. The present law merely requires that the method of teaching the subject of narcotics and alcohol be taught in the state colleges. There is no requirement that such instructions be given on these subjects in the state universities or in private colleges or universities; nor is there any requirement in the present law that instructions be given in teacher's training classes as to the best methods of teaching the effects of dangerous drugs.¹

3. That the California State Department of Education be requested to establish in-service teacher's training classes on the subjects of narcotics and dangerous drugs throughout the State of California. A qualified team of experts could be utilized to teach such classes on a regional basis. Such in-service training should be repeated every few years to bring the quality of their instruction up to date. It should be noted that little or no training has been received by California teachers on the subject of dangerous drugs. The use of such drugs has been rising at an alarming rate among school children (see Special Interim Report on Dangerous Drugs).

4. That the California State Department of Education be requested to publish a new manual for teachers concerning narcotics and dangerous drugs. The current manual (*Narcotics, The Study of a Modern Problem*) was published almost ten years ago and is in need of revision because its information is dated. Consideration should be given to the publication of such a teacher's manual in loose leaf form so that periodic supplements can be issued in order to make future revisions less expensive and to permit editing whenever any of the materials become dated.

5. That printed information be made available for distribution to school children concerning the effects of narcotics and dangerous drugs on the human body. No such information is published by any state agency for distribution to students. Misinformation about narcotics which makes addiction appear to be mysterious and even glamorous is available in television, in the newspapers, in motion pictures and in current literature. Because of a lack of understanding as to the dangers

¹ Education Code, Section 23857.

involved and of the extreme difficulty in achieving permanent cure once a person becomes an addict, the Commission feels that a factual presentation of these subjects is necessary to protect those who might otherwise be tempted to experiment.

6. That printed material be made available for distribution to parents concerning the symptoms of the use and addiction to narcotics and dangerous drugs and their effects on the human body so that they may counsel their children as to the serious consequences involved in addiction. In addition, such information will permit parents to be alert and vigilant to protect their children from association with addicts.

7. That the State Department of Education be requested to produce audio-visual teaching aids and resource materials on the subject of narcotics for use in the classroom. The Commission was advised that there is no suitable film on the subject of narcotics and dangerous drugs available. Some of the films that are presently available and in use in the classroom are over thirty years old.

8. That television be utilized to educate parents and children on the subject of narcotics and dangerous drugs. A special program on the subject should be produced with the cooperation of a committee composed of representatives of law enforcement, the California Medical Association, the California Department of Education and the California Public Health Department. A kinescope of such a special program could be distributed to television stations throughout California.

9. That the Department of Public Health be charged with the responsibility for publishing printed materials concerning narcotics and dangerous drugs for distribution to the public upon request. No such material is being produced, although the California Department of Public Health has the responsibility to furnish information to the public concerning narcotics.

10. That the California Department of Public Health be requested to publish a manual for physicians setting forth the currently accepted methodology for withdrawing a patient from the use of narcotics and dangerous drugs within the limitations imposed by the Health and Safety Code, Section 11391.

11. That the California Department of Public Health be requested to publish a manual for physicians detailing the effect on the human body of the dangerous drugs. (Note: On June 22, 1961, a United Press International News release reported² that Dr. Milton A. Duskin has prepared a paper for the Journal of American Medical Association in which he warns that the use of dangerous drugs of the amphetamine group [also known as "bennies", "pep pills", and reducing pills] may precipitate psychoses when prescribed to emotionally unstable persons. Dr. Duskin explained that these drugs "break down the usual mental defenses and release the anxieties usually held in check. In some cases, this may result in a complete emotional breakdown.")

12. That an Interdepartmental Committee on Narcotics be created under the direction of a state official, the Attorney General, to coordinate the activities of each state agency which has some responsibility in connection with the control of the illegal use of narcotics and dangerous drugs. The Commission has found that there is little coordination among the various agencies responsible for coping with the problem of

addiction. Each agency is only handling a piece of this problem. Some aspects of the over-all problem, such as education and prevention, are not being adequately covered by any agency. Each agency looks to another department to assume the over-all responsibility. Such a committee could insure the free exchange of information concerning problems related to addiction and the narcotics and dangerous drugs traffic. A clear definition of the responsibility of each state agency could be formulated by such a committee.

In addition, this Committee could take action to see that positive steps are taken to use the recommendations and suggestions of legislative committees and state commissions.

13. That an institute for the study of addiction to narcotics and dangerous drugs be created in a state university to conduct research into the effects of narcotics and dangerous drugs on the human mind and body.

The Commission was advised that many physicians are prescribing narcotics and dangerous drugs without a full understanding of the consequences to the health of their patients. Such an institute could make an independent study, assess the true nature and effects of such medication, and advise the medical profession. Such emphasis should be placed on new preparations which are being placed on the market by drug manufacturers without adequate information to physicians as to their effects.

This institute should also conduct studies as to the etiology or causes of addiction and the physiology or effect on body organs of narcotics and dangerous drugs. In addition, this institute should study the relationship between addiction to narcotics or dangerous drugs and environmental factors, such as ethnic background, standard of living, income group, educational background, and urban and suburban neighborhood.

14. That a follow-up study be made by an appropriate state agency or by an institute for the study of addiction to narcotics and dangerous drugs as suggested above, of all the children in the primary grades in three elementary schools in three separate areas with a high incidence of addiction, to find out the early pattern of behavior of addicts prior to the time they first used narcotics or dangerous drugs. By means of such a study, the common characteristics of the addiction-prone personality might be learned. Armed with such knowledge, the school teacher, the counselor and the school psychologist might be able to identify the potential addict early in his school career and could thereby devote their full attention and the resources of the school and community to prevent addiction to narcotics or dangerous drugs.

² Los Angeles Times, June 22, 1961.

EDUCATION AND PREVENTION

As was indicated in its Interim Report, the Commission, during the second half of its term of office, made a study of the nature and the adequacy of the existing Education and Prevention programs aimed at controlling addiction to narcotics. The Commission was aided in this study by representatives of the Youth Authority, the Department of Public Health, the Department of Corrections, the Department of Education, local education departments, and state and local law enforcement agencies. In addition, the Commission heard the views of members of the Committee on Therapy of the Northern California Psychiatric Society. The Commission is also indebted to Dr. Robert D. Russell of the Department of Health Education at Stanford University for the valuable assistance given by him in sharing the results of his research into the problem of education in the schools concerning addiction to narcotics and dangerous drugs.

I. PUBLIC INFORMATION ON ADDICTION

The Commission has learned that the California Department of Public Health is responsible for disseminating information on narcotics through its Bureau of Mental Health Education. Furthermore, the Department feels there is a need for public information on the causes of addiction. However, the Commission was advised that the Department of Public Health did not print or produce any materials for public distribution concerning narcotics. The Commission was told that the failure to print and distribute such materials was due to the fact that this department had "no charge from the Governor" to produce information for the public on narcotics and did not feel it should assert or assume leadership in this field.

The Commission requested a college student, a housewife, and a parole officer to solicit information on narcotics from the Department of Public Health. The college student was advised "we have no specific information on the subject of narcotics to send to you that would not be found in your public library." The housewife received a form postal card stating, "Your request for pamphlets has been referred to your local health department. You should be hearing from them soon." Shortly, thereafter, she received a pamphlet from the Los Angeles County Division of Public Health Education. This pamphlet was printed in 1951 by the United States Public Health Service. The parole officer was advised, "This Department does not have any direct responsibility for reports on narcotics and narcotics addiction." The officer was referred to the Department of Corrections, the Department of Mental Hygiene, and the Bureau of Narcotic Enforcement.

The Commission was further advised that there is a need for a guide or manual for medical doctors setting forth with clarity the limitations on the lawful use of narcotics in treatment. In addition, the Commission was told that medical doctors should be advised as to the present treatment methodologies for withdrawal from narcotic use. According

to the California Department of Public Health, physiological withdrawal from narcotics addiction under a physician's care is so easy that it is immoral and unethical to give narcotics to addicts.

The Department of Public Health also informed the Commission that the medical profession was poorly informed as to the effects of dangerous drugs. The Commission was advised that patients receiving tranquilizers under the supervision of a doctor die at a higher rate than non-users in every one of the top ten causes of death. It was recommended to the Commission that research was necessary to study the effects of tranquilizers, Nembutal and the other hypnotics, amphetamine and the stimulant type drugs, and all other dangerous drugs to determine their effects on the body, the death rate, and on driving ability.

II. EDUCATION IN THE PUBLIC SCHOOLS ON NARCOTICS

The State law of California requires that students be taught about "the nature of alcohol and narcotics and their effects upon the human system as determined by science."³ The Commission was advised that there is no state-wide coordination or supervision as to the nature and quality of the instruction given on narcotics. This responsibility is left to the local school boards, who in turn pass it on to the superintendent. Ultimately, the school principal or department head is required to prepare a course of study on narcotics to satisfy the requirements of the state law.⁴ The school principal or department head is left with the discretion of how and by whom the course in narcotics will be taught. He decides if it is to be taught as a separate subject, or by use of a film, or at a school assembly. In many schools, outside speakers, including law enforcement officers, are asked to give the lecture on narcotics. The Commission was advised by law enforcement officials that they believe they should *not* be asked to try to act as teachers. The educator should assume this responsibility and prepare himself to teach this subject.

The subject of narcotics is usually left to the science teacher, the physical education class, or in some schools, the driver education teacher. The Commission was advised that only about $\frac{1}{4}$ th of the high schools in California include a course in health education in the high school curriculum. A class in health education would appear to be the logical place to teach children about narcotics. The Commission listened to the views of students from the Southern California area concerning what they had been taught about narcotics. These students stated the teachers themselves were unaware of the extent of the dangerous drug problem in their own schools. One student stated he was not taught anything about narcotics or dangerous drugs in school. He stated he found out about the subjects on television. The other students stated the information they received on heroin was quite dated. One student pointed out that the films they were shown on narcotics had 1920 automobiles in the background. All the students agreed that there was inadequate instruction on marijuana and none on the dangerous drugs.

³ Education Code section 8253.

⁴ Education Code section 8254.

III. PREPARATION OF TEACHERS FOR CLASSROOM INSTRUCTION ON NARCOTICS

The Commission was advised that the classroom teacher is not receiving adequate training in California colleges and universities to instruct on narcotics and addiction. A representative of the Los Angeles City Board of Education told the Commission that very few of the teachers in his school system have any background or training as to narcotics. The present state law requires that college students training to be teachers be instructed on *Alcohol and narcotics* in our state colleges.⁵ There is no requirement that such training be given in state universities, or in private colleges or universities. Nor is there a requirement that any instruction be given as to the nature and effects of dangerous drugs.

The Commission believes that every teacher who teaches the subject of narcotics should secure adequate training and preparation as to the nature and effects of narcotics and dangerous drugs as a required prerequisite in order to be allowed to teach this subject.

IV. IN-SERVICE TRAINING FOR TEACHERS

The Commission was advised that the in-service training received by teachers on the subject of narcotics is inadequate. No such training is being given concerning the effects on the human body of the dangerous drugs, although there is ample proof use of these drugs is becoming a more serious menace among school children than the use of marijuana or heroin (see discussion on Dangerous Drugs, page 64).

It was suggested to the Commission by a representative of the Department of Education that a state-wide program should be adopted to provide in-service training by means of a series of regional institutes for teachers on narcotics and dangerous drugs to be conducted by a team of three highly qualified persons. These regional institutes would be repeated every five years.

V. MATERIALS FOR TEACHING ABOUT THE NARCOTICS PROBLEM

The State of California published a pamphlet on narcotics in 1952, entitled, *Narcotics, The Study of a Modern Problem*. This manual is still being distributed to teachers throughout the State of California. It has not been revised or brought up to date since its publication. It was described by representatives of the California Department of Public Health and the Department of Education as being out of date and in need of revision. A representative of the Los Angeles City Board of Education stated that the worst problem in the field of education concerning education on the narcotics problem is the lack of resource material to put in the hands of teachers for reference purposes.

Dr. Robert D. Russell of Stanford University told the Commission he had recently finished writing a paper on the problem of narcotics education in the public schools. In doing his research, Dr. Russell found that nothing has been written on narcotics education since 1959. Most of the writing in this field was done prior to 1953. It was suggested by Dr. Russell that the state teacher's manual on narcotics, referred to above, be revised and reprinted on loose leaf form so that a yearly

supplement could be distributed to keep it up to date with the latest research findings in this field.

The Commission found that some of the local boards of education have attempted to develop their own guides or teacher's manual on narcotics. These manuals are also dated and contain inaccurate information. One such pamphlet distributed by the Los Angeles City Board of Education as resource material for its teachers contains the following statement:

"So far we in Los Angeles are comparatively free from this evil."⁶ (The facts are that Los Angeles is second only to New York City in the total number of resident narcotics addicts. Arrests for narcotics violations have climbed steadily each year since 1952 in the Los Angeles area.)

The Commission was advised by the Department of Education that there is no suitable educational film on narcotics for use in the public schools. As pointed out above, it was reported to the Commission that students, in some instances, are being shown films that are outdated.

It was suggested to the Commission by the Department of Education that encouragement be given to the development of new and up to date educational films on narcotics.

The Commission was informed that the Department of Education is prepared to offer suggestions as to the content of such films.

The Commission was also advised by Miss Patricia Hill of the Department of Education that there is no material available for distribution to students seeking information about narcotics. Miss Hill suggested that printed material suitable for use by students should be prepared and distributed by the State of California.

Every educator who appeared before the Commission stated that students should be taught the facts about narcotics, so that they can make an intelligent choice when tempted by someone to use narcotics. It was also pointed out that, since such information is available in the newspapers and in current literature, it is better for the student to receive this information accurately and scientifically in school.

The Commission also learned that the State of California has no printed material available for distribution to the parents of school children. Miss Hill stated that adult education in the field of narcotics is very important.

The Commission was advised that television offered an excellent opportunity for adult education on narcotics. Such a program could be developed and placed on film and shown throughout the State of California as a part of the public service obligation of the television industry.

The prevention of narcotics addiction is closely interwoven with the problem of education in the schools concerning narcotics. The role of the school is to prevent delinquency or anti-social behavior in any form and to attack and attempt to resolve any problem which reduces educability, whether it involves the use of narcotics, dangerous drugs, or glue and gasoline sniffing.

⁶ *Narcotics and Their Effect* (1952), page 11.

⁵ Education Code, section 23857.

The Commission was advised by the various educators who appeared before it, that youngsters who eventually become narcotic addicts have a tendency to anti-social behavior which begins to exhibit itself in the early school years.

The Commission was informed that addiction could be effectively prevented if such addiction-prone children were to be identified as soon as possible so that all the resources of the home, school, church, and the community could be brought to bear so as to mold or change their personality and behavior patterns. The Commission was told by Mr. Dwight Lyons of the Los Angeles City Board of Education that such preventative treatment should be done in the elementary school before the child becomes exposed to narcotics or has launched himself on a criminal career.

To underscore the need for early detection and preventative counseling or therapy, it should be noted that the grade level of the 3,500 former narcotics users in our California prisons is 7.5 years. These statistics would indicate that, at least for this group, a senior high school education and prevention program concerning addiction comes too late and serves no purpose.

The Commission believes that an effective prevention and treatment program concerning addiction cannot be achieved without objective research to develop new methods and test the validity of existing programs.

A DISCUSSION OF THE PROPOSALS TO FURNISH NARCOTICS TO ADDICTS AT COST THROUGH STATE-OPERATED CLINICS

Many of those who seek a panacea solution to the narcotics problem find their answer in proposals to furnish narcotics to addicts at cost in state-operated clinics or dispensaries. The advocates of such an approach argue that the addict is incurable. They state that the addict must have narcotics to stave off unbearable withdrawal symptoms. It is argued that the peddler preys on the misery of these unfortunates by making huge profits by charging exorbitant prices for illegal narcotics. Give narcotics away and you will take the profit out of the narcotics traffic, is the common argument presented by the supporters of this view.

The Commission believes that such proposals are unsound and based on many erroneous assumptions.

There is no proof that addicts are incurable. Up to the present time, the only attempts at treatment for narcotics addiction have all suffered from the same defect—a lack of mandatory follow-up supervision and control in the community with outpatient treatment and adequate tests to detect relapse to the use of narcotics.

The Commission was advised by the Department of Public Health that an addict not suffering from a serious disability can be withdrawn from the use of narcotics by substituting another narcotic which has minor withdrawal symptoms. This being the case, a serious ethical question would be raised if a doctor were to administer narcotics to an addict to satisfy his hedonistic cravings, rather than for any legitimate medical purpose.

Because of the great interest of many persons in California in the proposals to furnish narcotics to addicts⁷ and because of the lack of information as to the merits of such a plan, the Commission has prepared the following analysis of the arguments for and against the so-called "clinic" system. As pointed out above, the Commission believes that the arguments against any such program are compelling and should be followed.

THE "CLINIC" PROPOSALS

A proposed solution to the narcotic problem which continually recurs in various forms is the proposition that narcotics be legally dispensed to addicts.⁸ There are two basic variations in the proposals for legally furnishing narcotics. One, the "ambulatory" treatment of addicts would grant physicians latitude to freely prescribe narcotics to addicts; the other, "the narcotic clinics" calls for the creation of special facilities for the administering of narcotics to addicts. The underlying reasoning for both approaches are essentially the same. This report will not distinguish between variants of the basic theme.

The main arguments presented for legally dispensing narcotics can be reduced to the following:

1. The root of the narcotic problem is economic gain from illegal traffic; hence, it is argued, if narcotics is dispensed legally at low cost, the economic motive is removed and the problem is eliminated. "The Academy believes that the most effective way to eradicate drug addiction is to take the profit out of the illicit drug traffic. The causes of addiction are cited as: maladjustment, under-privilege, broken home, poverty. Such conditions may well be contributory factors, but they are not, of themselves, the prime cause. Rather, profit looms large as the principal factor." (Report on Drug Addiction by New York Academy of Medicine: op. cit.)
2. Furnishing narcotics to addicts would facilitate treatment of addicts. "Addicts resistant to undertaking therapy and continuously refractory to therapy, despite all efforts, should be 'supplied' legally and cheaply with the minimum amount of their drug needs, and efforts to persuade them to undergo rehabilitation should be continued." (Report on Drug Addiction by the New York Academy of Medicine: op. cit.)

⁷ A bill was presented in the Senate in the 1961 Legislature to set up state clinics for dispensing narcotics to addicts. S.B. 338.

⁸ "The addict should be able to obtain his drugs at low cost under Federal Control, in conjunction with efforts to have him undergo withdrawal." (Report on Drug Addiction by New York Academy of Medicine, Bulletin of the New York Academy of Medicine, August 1955, Vol. 31, No. 8—592-707.)

"The first step in any plan to alleviate this dreadful affliction (addiction) should be the establishment of Federal Control and dispensation—at cost—of habit-forming drugs." (Vollmer, A.: *The Police and Modern Society*, Berkeley 1936.)

"Though short-lived, clinics (established in the United States) demonstrated that addicts furnished drugs at reasonable prices resumed their places in society as useful, law-abiding, self-supporting citizens . . . can as much be said for the system of narcotic drug control that has replaced these 'failures'?" (Howe, Hubert S.: *An Alternative Solution to the Narcotic Problem, Law and Contemporary Problems*, Winter, 1957.)

"The fact that the addict will be placed in contact with a physician will be a major victory in many cases and will go a long way toward eventual rehabilitation."

(Belson, J., in *NARCOTICS, USA*, edited by Paul B. Weston, Greenberg—Publisher, 1952.)

3. Dispensing of drugs to addicts is humane and economical since drug addiction is incurable.

"Why not accept the fact that addiction is incurable and then go on to deal with the problem . . . much of this enormous cost (of addiction by trials, imprisonment, etc.) borne by the taxpayer could be abolished if drugs were available to addicts at the legitimate price."

(Dr. J. Ross MacLean, Vancouver, Testimony before Canadian Parliament, Special Commission on Traffic in Narcotic Drugs—Proceedings, March-June, 1955.)

4. Furnishing of drugs to addicts would enable some addicts to resume their place in society as socially useful citizens.

"The one point of view that has never been officially accepted in the United States is that some addicts can be, and remain useful and law-abiding citizens if they can be provided with their minimum requirements. There is much evidence, as a matter of fact, that many chronically addicted persons are able to carry on their occupations and meet their responsibilities if continuously allowed a small amount of narcotic drug at a price they can afford."

(Howe, H. S.: A physician's blueprint for the management and prevention of narcotic addiction, *New York State J. Med.*, February 1, 1955, p. 341-350.)

5. Dispensing narcotics would reduce its attractiveness to youth.

"If drugs were legal they would lose their glamor and adolescents would not be attracted to them as they are now. Some addicts claim too, that having learned to like narcotics, they resent the legal prohibition and are all the more determined to get them."

(Stephenson, G. H.: Arguments for and against the legal sale of narcotics, *THE BULLETIN*, Vancouver Medical Association, Vol. XXXI, January 1955, p. 177-186.)

6. Furnishing narcotics to addicts would reduce crime caused by the addict's need to maintain his habit.

"It should be remembered that every addict will get his drug. Under the present laws to do that he must 'push, rob, steal, burglarize or commit forgery'. For, he is desperate when he is without his drugs."

(New York Academy of Medicine: op. cit.)

OPPOSITION TO FURNISHING NARCOTICS TO ADDICTS

The great bulk of expert opinion is unalterably opposed to furnishing narcotics to addicts. The arguments advanced by those opposed to such proposals are as follows:

1. Dispensing narcotics to addicts was tried and proved to be a failure.

"The clinics were operated for varying periods and in one city as long as 4 years. The most comprehensive series of facts, having real scientific value, that had been compiled anywhere in the world, was embraced in the published statistics gathered from analytical study of the nearly 8,000 cases of addiction registered and cared for in narcotic clinics during about 10 months by the Department of Health of the City of New York. These cases were subjected to most careful observation and study by specialists qualified to make scientific analysis and arrive at sound conclusions. They reported, 'we have given the clinic a careful and thorough as well as a lengthy trial and we honestly believe it is unwise to maintain it any longer'." (Anslinger, H. A., and Tompkins: *Narcotic Clinics in the United States in The Traffic in Narcotics.*)

2. Furnishing narcotics to addicts will create new addicts.

"... prior to the passage of the Harrison Narcotic Act in 1914, when there was no illicit market and narcotics could be bought for pennies over the counter, the rate of drug addiction was five to eight times the current rate. Thus, if we removed all legal restraints and thereby managed to eliminate the illicit trade in narcotics, there is every reason to believe that the population of drug addicts would be increased at least fivefold." (Ausubel, D. P., *Controversial Issues in the Management of Drug Addiction: Legalization, Ambulatory Treatment and the British System—a paper read at American Psychological Association, September 4, 1959.*)

"... it seems unlikely that furnishing drugs to addicts legally will stop the formation of new addicts. It might very well enhance the spread of addiction, since the same social factors which presently are associated with addiction will continue to operate despite its source of narcotics." (Council for Mental Health, American Medical Association, *J. of American Medical Association*, Vol. 165, November 30, December 7, December 14, 1957.)

3. Administering narcotics to addicts would undermine treatment of addiction.

"To protect patients from themselves and from their well-meaning but misguided families, it is the writer's firm conviction that laws pertaining to mental health should be strengthened. Hospitalization and complete treatment, consisting of withdrawal, rehabilitation and re-education should be made compulsory for all habitual users of drugs." (Yost, O. R.: *The Bane of Drug Addiction*. MacMillan Co., 1954.)

"Withdrawal of drugs from narcotic addicts on an outpatient or office basis should not be undertaken; it almost surely will

fail. . . . In the treatment of addiction, short hospitalization for withdrawal without a prolonged period of institutional rehabilitation is as futile as simple detoxification for chronic alcoholism". (Vogel, V. H., Isbell, H. and Chapman, K. W., Present Status of Narcotic Addiction, *J. of American Medical Association*, Dec. 4, 1948, Vol. 138.)

"Compulsory institutional treatment in a drug free environment is essential . . . !" (Ausubel, D. P.: op. cit.)

4. Furnishing narcotics to addicts will not work to reduce the illegal traffic in narcotics since such proposals fail to take into account increased physiological tolerance.

"It is one of the certain facts about heroin use that larger and larger doses are required, because of the peculiar mechanism of 'tolerance'. To get the desired effect the dose has to be steadily increased. Unless the 'clinic' is to sell the addict as much narcotics as he requests, he must go to illegal sources for the amount he wants." (Stevenson, G. H.: op. cit.)

5. Dispensing narcotics to addicts will not reduce its allure.

"It greatly oversimplifies matters to attribute all of the glamour of drugs to their unlawful status: alcohol, cigarettes, cosmetics and automobiles are not illegal and still hold great fascination for youngsters." (Ausubel, D. P.: op. cit.)

"The argument that if drugs were legal they would lose their glamour and would not appeal to adolescents is very questionable. Legal sales of alcoholic beverages has not made them unattractive to our youth. There is no reason to think that the predisposed persons who become today's addicts, and who became so in adolescence or early childhood, would not have become drug users if narcotics had been legally procurable. Supportive evidence for this assertion is that 75% of this series of narcotic addicts had already become heavy users of alcohol . . . even though alcohol was legally available." (Stevenson, G. H.: op. cit.)

6. Furnishing narcotics to addicts would not undermine illegal drug traffic.

"In New York State alone when 16 or more narcotic clinics were in operation throughout the state, almost 4,000 ounces of narcotic drugs were seized in illicit channels during a year—or almost as much as was seized in the entire United States during 1952." (Anslinger and Tompkins: op. cit.)

7. Dispensing narcotics legally would not measurably prevent crime associated with drug use.

"There is very grave doubt that permitting addicts to receive drugs legally would actually result in good employment results or any sizeable diminution in crime. The 'narcotic clinic' experiment in the United States gave no support to these theories. Moreover, detailed studies of the employment and delinquency records of British Columbia addicts indicate that these poor records are not the result of narcotic use, but largely preceded their use of narcotics." (Stevenson, G. H.: op. cit.)

"It is possible that a proportion of addicts might do this (cease criminal activities). However, the basically hostile, anti-social psychopath could be expected to continue in his criminal activities regardless of whether or not he is receiving drugs." (Council of Mental Health, American Medical Association, op. cit.)

8. Furnishing narcotics to addicts would not enable such persons to lead otherwise socially useful lives.

"The belief that addicts whose drug demands are satisfied lead 'otherwise normal and productive lives,' is based on a myth which applies at most to a tiny fraction of the total addict population; namely, successful professional persons, usually physicians who take small doses to relieve anxiety. Most of these persons have long since switched to tranquilizers which are both more efficient for the purpose and not proscribed by law." (Ausubel, D. P.: op. cit.)

"The idea of establishing clinics for narcotic addicts where the addict can be furnished narcotics cheaply intrigues many people. Proponents of the idea naively assume that the person is quite normal as long as he can obtain narcotics. They should talk to doctor addicts who point out how their whole lives are meaningless except for one thing—and that is getting a shot four hours from now. Family, children, friends, and patients mean nothing to them. For example, in delivering a baby they will nonchalantly cut through into the rectum with no sense of remorse whatsoever." (Quinn, William F.,⁹ Narcotic Addiction in Physicians, Bulletin, Los Angeles County Medical Association, Vol. 88, No. 7, April 3, 1958).

9. Dispensing narcotics legally could be an infringement on the morality of society.

"Legalization would give drug addiction an unfortunate modicum of moral sanction that would encourage its spread among potential addicts." (Ausubel, D. P.: op. cit.)

"We believe the thought of permanently maintaining drug addiction with 'sustaining' doses of narcotic drugs to be utterly repugnant to the moral principals inherent in our laws and the character of our people." (Treatment and Rehabilitation of Narcotic Addicts, Report of the Committee on the Judiciary, U. S. Senate, containing findings of the Subcommittee on Improvements in the Federal Criminal Code, 84th Congress, 2nd Session, Rep. No. 1850, Washington, D. C., U. S. Government Printing Office, 1956.)

In summary, it should be mentioned that the United States Senate,¹⁰ the United States House of Representatives,¹¹ the Canadian Sen-

⁹ Dr. Quinn is a former President of the Los Angeles County Medical Association.

¹⁰ Senate Report No. 1850, 84th Congress, 2d Session: Treatment and Rehabilitation of Narcotic Addicts, Report of the Committee on the Judiciary, U.S. Senate, containing findings of the Subcommittee on Improvement in the Federal Criminal Code, pursuant to S. Res. 67 and S. Res. 166.

¹¹ Illicit Traffic in Narcotics, Barbiturates and Amphetamines in the United States. Report to The House Committee on Ways and Means from the Subcommittee on Narcotics, Washington, D.C., U.S. Government Printing Office, 1956.

ate¹² and various state commissions¹³ have considered and rejected the idea of furnishing narcotics to addicts.

THE BRITISH SYSTEM

Proponents of "narcotic clinics" are of the opinion that a system which permits the furnishing of narcotics to addicts exists in England and, as a result, the narcotic problem there has been eliminated. In actuality, the system of narcotic control in Great Britain, with some marked differences, is on the whole quite similar to the practice in the United States. Both countries subscribe to the same international conventions; both have enforcement programs to restrain illegal traffic in narcotics. Narcotic control practice in Great Britain in no way resembles the "clinic" system proposed by some persons in the United States.

Some authorities state that it is a misnomer to characterize English narcotic control as a special system.

"The British, incidentally, do not look with favor on references to the British system. They feel that the nature of their problem and what they consider a simple collection of administrative practices do not justify the designation "system" a term which they point out was invented by Americans." (Larimore, C. W. and Brill, H.: *The British Narcotic System Report of Study, New York State J. of Med.*, Vol. 60, No. 1, January 1, 1960.)

The essential difference between the United States and Great Britain is the role which the medical profession plays with respect to the treatment of narcotic addicts. In the United States, the medical profession shies away from treating addicts.

"But while the present law permits a physician to treat an addict in good faith and in the course of his professional practice, doctors are still reluctant to treat or prescribe for addict patients." (Joint Committee of the American Bar Association and the American Medical Association, *Narcotic Drugs*, Interim Report, 1958.)

The medical profession refrains from treating addicts primarily because there are no prescribed operating ground rules to guide it. The physician is particularly cautious because of the legal action which has been taken against some medical practitioners who have furnished narcotics to addicts even though, except for a few flagrant cases of prescription selling, the physician has eventually been vindicated.

Dr. Alexander Knox, representing the California Medical Association, synthesized the United States physician's attitude to the Commission:

"The Harrison Drug Act takes management and control of narcotics addiction out of the medical profession and puts it into the hand of law enforcement" . . . "The only doctors handling addicts are those in public institutions and a few doctors with shady practices. The average doctor is afraid of the penalties under the Harrison Drug Act." (Testimony before the Governor's Special Study Commission, July 20, 1960.)

¹² Proceedings of the Special Committee on Traffic in Narcotic Drugs in Canada, Rep. No. 1-15, The Senate of Canada, Ottawa, Ontario, Canada, Edmond Cloutier, 1955.
¹³ *Illegal Narcotics . . . A Pattern of Evil*, Narcotics Investigation Commission to our 70th General Assembly, State of Illinois, March 25, 1957.

In Great Britain, the physician does have a defined range of activities permissible by law. The British doctor or dentist may prescribe *minimal* dosages of narcotics when he is withdrawing his patient from addiction, when it has been demonstrated that abrupt abstinence threatens the life of his patient and when the narcotic is necessary for that patient to lead a *normal life*.

British narcotic control is defined in The Dangerous Drug Act of 1951, and the statutory power enabling physicians to dispense narcotics is contained in the memorandum entitled "*The Duties of Doctors and Dentists Under the Dangerous Drugs Act and Regulations*". The pertinent sections authorizing dispensing of drugs are to be found in Appendix IV. The following is the pertinent extract from the memorandum:

"(1) Precautions in the treatment of addicts.

51. In the preceding section, the conclusion has been stated that morphine or heroin may properly be administered to addicts in the following circumstances; namely, (a) where patients are under treatment by the gradual withdrawal method with a view to cure, (b) where it has been demonstrated, after a prolonged attempt at cure, that the use of the drug cannot be safely discontinued entirely, on account of the severity of the withdrawal symptom produced, and (c) where it has been similarly demonstrated that the patient, while capable of leading a useful and relatively normal life when a certain minimum dose is regularly administered, becomes incapable of this when the drug is entirely discontinued." (Excerpt from *The Duties of Doctors and Dentists Under the Dangerous Drugs Act and Regulations*, British Home Office, D.D. 101, 6th Ed., London, Her Majesty's Stationery Office, 1951.)

Administration of narcotics control in Great Britain is the responsibility of the Home Office. The following section of the memorandum on DUTIES OF DOCTORS AND DENTISTS, defines the limits allowed to physicians and is the guideline for enforcement of violations by the Home Office.

"7. The authority granted to a doctor or dentist to possess and supply dangerous drugs is limited by the words SO FAR AS MAY BE NECESSARY FOR THE PRACTICE OR EXERCISE OF HIS PROFESSION. In no circumstances may dangerous drugs be used for any other purpose than that of ministering to the strictly medical or dental needs of his patients. The continued supply of dangerous drugs to a patient solely for the gratification of addiction is not regarded as 'medical need'." (*Duties of Doctors and Dentists*: op cit.)

Doctors who fail to conform to regulations are subject to a fine and a maximum prison sentence of ten years.

To facilitate enforcement of the narcotic laws, doctors and dentists are required to maintain records of all narcotics obtained and dispensed to patients. Any prescription involving a narcotic must be in writing, dated, signed and bear the name of the patient.

The Home Office is assisted in narcotic enforcement which involves physicians by the National Health Service of the Ministry of Health,

Regional Medical offices. The Regional Medical offices urge all physicians to obtain consultation with another doctor before prescribing narcotics. They attempt to convince physicians that it is desirable that addicts be hospitalized for withdrawal from physiological dependence upon narcotics.

The Regional Medical Offices, in routine visits, checks the dangerous drugs register of each doctor. This register contains information on all drugs obtained and all prescribed. If there are irregularities, the Health Service is able to take appropriate action.

The fact that physicians in Great Britain almost invariably report all addicts under treatment to the Home Office has led to an erroneous impression that there is a registry of addicts in Great Britain.¹⁴

In addition to enforcement of narcotic regulations for physicians, the Home Office regularly checks drug manufacturers, pharmacists and wholesalers. The larger cities maintain small special narcotic squads.¹⁵

THE APPLICABILITY OF THE "BRITISH SYSTEM" TO THE UNITED STATES

There is disagreement whether the system of narcotic control practiced in Great Britain is applicable to the United States. Two doctors, who visited Great Britain and made an intensive and authoritative study of narcotic control there, doubt if the same approach could be applied to the United States.

"The theoretic freedom that British physicians have under the law to prescribe narcotics, while not taken advantage of widely, still is not believed applicable for adoption in the United States. The operation of the National Health Service of England, which practically prevents patients from going freely from one physician to another, effectively deters addicts from obtaining drugs from more than one physician at a time. The absence of such a deterrent in the United States is in itself a compelling reason not to introduce the British System in this country." (Larimore, G. W. & Brill, H.: op. cit.)

Another authority doubted that the British System would be necessary for Canada.

"When one sees the way addicts improve in weight and in their general health following discontinuance of narcotics, and how much better they are able to work, one realizes the lack of need for such over-cautious handling of addicts as is the custom in England." (Stevenson, G. N.: op. cit.)

The view that the British approach is not advisable for the United States is shared by the Federal Bureau of Narcotics¹⁶ and D. P. Ausubel.¹⁷

¹⁴ Larimore and Brill: op. cit.

¹⁵ Larimore and Brill: op. cit.

¹⁶ Comments on Narcotic Drugs; Interim Report of the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs by Advisory Committee to the Federal Bureau of Narcotics, July, 1958.

¹⁷ Op. cit.

There are some observers of the British System who are of the opinion that it would be advantageous to adopt a similar approach in the United States.

"Since about 1940, the writer himself has periodically suggested that an adaptation of the British idea be tried in this country

The obvious advantages of this system are that it removes the major motives for peddling narcotics and for the creation of new users, puts pressure on the addict to seek medical care and removes his incentive to engage in crime."

(Lindesmith, A. R.: Traffic in Dope, *Nation*, April 25, 1956.)*¹⁸

THE BRITISH SYSTEM AND THE NARCOTIC PROBLEM

There is general agreement that there is less of a narcotic problem in Great Britain than there is in the United States. There is no agreement as to the reasons for the differences between the two countries.

Some observers have expressed the view that the type of narcotic control system used in Britain has been a primary cause in reducing the addiction rate.¹⁹

The view that the low addiction rate in Great Britain is not related to the system of narcotic control also has strong adherents.

"The favorable British narcotic situation is not the result of the British narcotic control system.

If it is not the system, then what is it? . . . The answers lay with the British people themselves . . . The British have a definite abhorrence of narcotic drugs, which has become incorporated into their mores and culture.

In England what appears to be the major gap in the epidemiologic picture, probably for cultural reasons, is the susceptible individual."

(Larimore, G. W., and Brill, H.: op. cit.)

"Thus, it would be more reasonable to conclude that the low rate of addiction in the United Kingdom exists despite rather than because of the British system, and that if the system were substituted for more stringent methods of control in countries where the population is more vulnerable to drug abuse, it would greatly increase the incidence of addiction."

(Ausubel, D. P.: op. cit.)

It should be mentioned that there does not appear to be general good results obtained with the "British System". Hong Kong, operating under the identical narcotics control system as Great Britain, has an appalling high rate of addiction.

The total number of addicts in Hong Kong is unknown, "some would place the total as high as 200,000 to 250,000. More conservative estimates are in the neighborhood of 150,000 to 180,000."

(The Problem of Narcotic Drugs in Hong Kong, a White Paper laid before Legislative Council, November 11, 1959.)

* Note: These arguments and their answers are discussed in relation to the "clinic" system previously in this report.

¹⁸ See also, Schur, M.: Drug Addiction in America and England, COMMENTARY, September, 1960.

¹⁹ Lindesmith: op. cit.
Schur: op. cit.

THE ROLE OF PHYSICIANS IN THE NARCOTICS PROBLEM

A recurring argument that is found among the proponents of legally dispensing narcotics to addicts is that the "clinic" system would be a means for greater involvement of the physician in the treatment of the addict.

Many of those opposed to furnishing narcotics to addicts are of the opinion that there is need for some change in the restriction placed upon the doctor in the United States.

"It may very well be that the regulations concerning dispensing of drugs to addicts have been interpreted and enforced too rigidly. A physician who furnishes an addict a small quantity of narcotics to tide him over until he reaches an institution, or who gives an addict narcotics so that he can arrange his affairs prior to entering a hospital for treatment is in danger of being charged with a violation of the law, despite the fact that he may be acting in what he regards as the best interest of his patient. The Council, though realizing that it might be very difficult to devise a system which would prevent all possible abuse, feels that the regulations should be altered to cover situations of this sort." (*Council on Mental Health, American Medical Association*, op. cit.)

One factor which hampers physician involvement in the treatment of the addict is the lack of adequate facilities in the community.

"A major weakness in current efforts to treat and rehabilitate drug addicts is the almost complete lack of follow-up or post-hospitalization facilities on the community level." (Committee on the Judiciary of the United States Senate containing the Findings and Recommendations of the Sub-committee on Improvements on the Federal Criminal Code, *Bulletin on Narcotics*, United Nations, Vol. VIII, No. 3, July-September, 1956.)

As previously stated, medical opinion has been overwhelmingly opposed to dispensing of narcotics to addicts. The majority view is that treatment of the addict begins with confinement of the addict for "detoxification."

The Commission believes that local medical associations should consider establishing reviewing Boards of doctors to whom a physician may refer if there is any question as to ethical responsibility or potential illegal conduct in prescribing narcotics to patients for medical purposes. If such Board concludes that a legitimate medical purpose would be served by the administering of narcotics to the patient, the Board would be empowered to approve such actions. Such a reviewing Board would protect the ethical doctor who might otherwise be afraid to administer narcotics when it was medically warranted and permissible under present laws.

THE FEDERAL HOSPITALS FOR THE TREATMENT OF ADDICTS

The United States Public Health Service maintains two hospitals for the treatment of addicts. The first of these hospitals was established in Lexington, Kentucky, in 1935 and the other in 1937 at Fort Worth, Texas.

These hospitals have a capacity of 2,000 beds and a staff of over 400. In order to be admitted for treatment, the addict must be addicted to narcotics as defined by federal law. Persons addicted to barbiturates and other dangerous drugs are not eligible for admission.²⁰

Both involuntary, consisting of federal prisoners and probationers, and voluntary patients are admitted to treatment. However, it has been the experience of the hospitals with voluntary admissions that:

"only 25% of these remain for the recommended period of 4½ months."²¹

The Lexington Hospital accepts all female addicts from all states and male addicts from states east of the Mississippi River, while Fort Worth accepts male addicts from states west of the Mississippi River.

The treatment program at the federal hospitals consist of three phases, (1) the withdrawal from dependence on the drug which is accomplished by administering decreasing dosages of methadon, (2) the treatment of physical symptoms and the restoration of physical health and (3) the treatment of underlying psychological problems of the addict by means of psychotherapy and counseling.

There is a minimum of 4½ months of treatment in the hospital program. The withdrawal phase is concluded usually within two weeks.

There has been no carefully designed follow-up study of persons released after treatment at the federal hospitals. Surveys which have been conducted to determine the rate of readdiction among those who have been discharged from these hospitals indicate that a large percentage of addicts treated at the federal hospitals relapse to narcotic use.

"Less than 15% of the thousands of addict-patients who have been treated at federal hospitals have remained off drugs thereafter."²²

The explanation advanced for the failure of the federal hospitals is the lack of post-hospitalization care and control.

"A major weakness in current efforts to treat and rehabilitate drug addicts is the almost complete lack of follow-up or post-hospitalization facilities on the community level to check upon and aid the addict once he leaves the federal narcotics hospital."²³

The federal hospital is the beginning phase of a treatment program for the addict. It should not be considered as a complete treatment program.

"Completion of hospital treatment marks the beginning of community treatment and rehabilitation. While it is necessary to remove the addict from the setting in which addiction occurred to a controlled environment, if hospitalization has served its pur-

²⁰ "These include cocaine, codeine, dihydromorphine (dilaudid), heroin, Indian hemp (marihuana), laudanum, meperidine (demerol), methadone (dalaphine), metopon, morphine, opium, pantopon, paregoric, peyote (mescaline) and any other narcotic drug, the sale of which is under the Federal Narcotic Act. Persons addicted to barbiturates, alcohol or other drugs are not eligible for admission unless they are also addicted to a narcotic drug." Lowry, James V.: *Hospital Treatment of the Narcotic Addict: Federal Probation*, Vol. 20, No. 4, Dec., 1956.

²¹ Treatment and Rehabilitation of Narcotic Addicts: *Bulletin on Narcotics*, Vol. VIII, No. 3, July-September, 1956, United Nations.

²² *Bulletin on Narcotics*: op. cit.

²³ *Ibid.*

pose it has prepared the patient for return to the community. Hospital treatment can start a patient on the way to recovery but it cannot provide a life-long immunity that protects the patient against relapse. Hospital treatment can facilitate rehabilitation but it must be completed after the patient returns to the community."²⁴

The two federal hospitals have never had post-institutional treatment programs:

"because we have neither the legal responsibility nor authority to provide more than hospital treatment."²⁵

In an effort to provide better post-hospitalization programs for addicts released from Lexington, the New York Demonstration Center, under the auspices of the National Institute of Mental Health, was inaugurated in 1957. The Center has two major objectives. These are:

"(1) to assist these agencies to extend their services to drug addicts and (2) to continue a longitudinal study of the patterns of relapse and adjustment to the community found in a sample of the discharges from the hospital."²⁶

In order to accomplish these aims, the New York Demonstration Center maintains a staff of eight social workers and engages the services of a psychiatric consultant: The instant problem that the Center found was the social agency attitudes toward addicts.

"Municipal and voluntary hospitals and mental hygiene clinics had consistently closed their doors to all narcotic addicts."²⁷

At present, the results of this project are not known. The preliminary report from the project²⁸ indicates that they have been instrumental in making agencies more receptive to addict-patients. There was no indication whether the Center has affected the relapse rate of addicts released from federal hospitals.

A COMPARISON OF EXISTING TREATMENT PROGRAMS

At the present time, anyone seeking to help an addict to rid himself of his addiction, finds very few treatment facilities available. The few that are in existence range from self-help groups patterned after Alcoholics Anonymous to the pilot research project of the Department of Corrections, the Narcotic Treatment-Control Project. Those that are in existence (except for the Alameda County Program and the Narcotic Treatment-Control Project) have no mandatory follow-up supervision and control to detect reuse, coupled with outpatient treatment, nor do they have an adequate research program to test the effectiveness of present techniques and to develop new methods. The Commission believes that objective research and close mandatory supervision are important parts of any treatment program. The critical time

²⁴ Lowry, James V.: op. cit.

²⁵ Diamond, M. A., Medical Officer in Charge of Lexington, in a letter to the Governor's Special Study Commission on Narcotics, March, 1961.

²⁶ Brill, Leon: Preliminary experiences of a pilot project in drug addiction, *Social Casework*, January, 1961.

²⁷ Brill, Leon: op. cit.

²⁸ Brill, Leon: op. cit.

for any addict occurs when he leaves the treatment facility to return to the home environment and face the problems he was previously unable to master.

The Commission urges that any proposed state treatment program should include low cost hospital facilities similar to army barracks or county jail farms near large metropolitan areas. Dr. Blain, Director of the Department of Mental Hygiene, stated that treatment facilities should be close enough to the area where the addict resides, so that the hospital staff may examine the patient frequently, watch his progress and take an active part in his treatment program.

The following material is a summary and comparison of the existing federal, state, and county and private treatment facilities. The Commission has refrained from any evaluative comments as to the contribution of any of these programs.

TREATMENT OF ADDICTS

NATIONAL PROGRAMS

Public Health Service—Narcotics Hospitals

FACILITIES:

There are two federal narcotics hospitals, one is located at Lexington, Kentucky; the other, at Fort Worth, Texas. The Lexington hospital accepts male addicts from east of the Mississippi and female addicts from all over the country; the hospital at Fort Worth accepts only male addicts from west of the Mississippi.

ADMISSION POLICY:

The federal narcotic hospitals accept only persons habituated or addicted to opiates, cocaine and marihuana. Three classes of addicts are accepted: voluntary patients, addicts convicted of federal narcotics laws and probationers who had been convicted of narcotics offenses but given a suspended sentence on the condition that they accept treatment at this federal hospital.

TREATMENT PROGRAM:

Treatment for addicts at the federal hospital involves easing of withdrawal distress by use of the narcotic, Methadon, in successively decreasing dosages, treatment of medical ailments and psychotherapy for the underlying causes of the addiction. It is recommended that addicts receive a minimum of 4½ months treatment at the federal hospital.

Voluntary admissions usually do not choose to remain for the recommended period of treatment.

POST-HOSPITALIZATION CARE:

None.

RESULTS:

No systematic research has been undertaken to evaluate the effectiveness of the federal narcotic hospitals. There is general agreement that the vast majority of addicts treated at the federal hospitals relapse to the use of drugs.

CURRENT PROGRAMS—STATE OF CALIFORNIA
Department of Mental Hygiene

FACILITIES:

Ten State Mental Hygiene Hospitals, the majority of addicts are admitted to Camarillo and Metropolitan, the hospitals which are in close proximity to Los Angeles.

ADMISSION POLICY:

At the present time only those addicts who voluntarily request court commitments are admitted to mental hygiene hospitals.

TREATMENT PROGRAM:

Program includes medication to ease withdrawal; medical treatment of physical ailments and restoration of health. While no special narcotic treatment program exists for addicts, psychotherapy is given to addicts depending on their diagnosed underlying problem.

POST-HOSPITALIZATION CARE:

None.

RESULTS OF PROGRAM:

No adequate research; there is general agreement that the vast majority of addicts relapse to the use of narcotics.

PROPOSED CHANGES:

(Blain, D.—Director, Department of Mental Hygiene, proposal—February 7, 1961).

The Director proposed that mental hygiene treatment of addicts be expanded to include (a) mandatory post-hospitalization care and follow-up, (b) control over environment in the form of half-way houses, (c) greater involvement of community resources.

Department of Corrections Narcotic Treatment Control Program

FACILITIES FOR TREATMENT:

The Narcotic Treatment Control Program involves four special parole units and treatment detention units located at California Institution for Men (Chino) and at San Quentin.

ADMISSION POLICY:

The program is a pilot research project for adult paroled felons with a history of narcotic addiction.

TREATMENT PROGRAM:

Treatment program stresses reduced case loads, frequent anti-narcotic testing and a special detention treatment unit to which parolees who had relapsed to the use of drugs could be sent for a period not to exceed 90 days.

The treatment program at the detention unit provides for medication (non-narcotic) to ease withdrawal distress and intensive group counseling and therapy to attempt to resolve problems underlying addiction.

In addition to the treatment features, the program was part of a research design to test for its effectiveness.

POST-HOSPITALIZATION CARE:

The special parole units were designed to maintain close supervision prior to and after admission to the detention unit.

RESULTS:

The program has been in operation for too short a period to determine its effectiveness. However, more than half of the parolees in the program had shown some relapse to use of drugs within six months of exposure to the program.

PROPOSED CHANGES:

(Request through the Department of Corrections for National Institute of Health Grant to augment program, March 1, 1961).

It has been proposed that a half-way house be included in the program to provide for greater control over environment and associations of parolees.

TREATMENT OF ADDICTS

CURRENT PROGRAMS—ALAMEDA COUNTY
Santa Rita Rehabilitation Center

FACILITIES:

Santa Rita Rehabilitation Center is the Alameda County Jail Farm. It is located at Pleasanton, approximately 25 miles from Oakland.

ADMISSION POLICY:

Persons convicted of addiction are committed to Santa Rita for a minimum of 90 days.

TREATMENT PROGRAM:

The program includes medication to ease withdrawal,* medical treatment of physical ailments and restoration of health. Carbon dioxide treatment is offered some addicts. There is counseling provided by mental health therapists and probation officers at the institution.

POST-HOSPITALIZATION CARE:

Mandatory supervision by probation officers with regular Nalline testing.

RESULTS OF PROGRAM:

No adequate research; however, with the institution of Nalline testing, there has been the claim of marked reduction in rate of relapse. The addicts who do return to narcotic use are detected before they become readdicted.

COMMUNITY PROGRAMS
Narcotics Anonymous

FACILITIES:

Narcotics Anonymous has no special facilities.

* Methadon has been used in the treatment of withdrawal distress but according to the Medical Director, Dr. James Terry, there has been no occasion to administer narcotics in the last three years, as no case exhibited sufficient withdrawal distress to warrant it.

ADMISSION POLICY:

Any voluntary former addict. Any person who is under influence of narcotics is excluded from the program.

TREATMENT PROGRAM:

The treatment program of Narcotics Anonymous consists of weekly group meetings, visitations to addicts and supplying former addicts with literature.

POST-HOSPITALIZATION CARE:

Narcotics Anonymous can be considered as one form of post-hospitalization care.

RESULTS OF PROGRAM:

There are no published statistics of Narcotics Anonymous' success, and there is no way of evaluating the effectiveness of these groups.

PRIVATE PROGRAMS
Integrators Foundation

FACILITIES:

Integrators Foundation maintains office space; however, treatment is undertaken either at a hospital, the Foundation's office, or in the offices of staff psychiatrists or psychologists. Integrators Foundation has contracted with two hospitals for treatment of withdrawal and with a number of psychologists and psychiatrists for post-withdrawal treatment.

ADMISSION POLICY:

Any person volunteering for treatment who can afford the program is accepted for treatment.

TREATMENT PROGRAM:

The treatment program features enzyme treatment initiated while the addict is confined in the hospital for withdrawal. The post-hospitalization program includes continued enzyme treatment, chemical testing, group and individual psychotherapy, family counseling, placement counseling and vocational guidance. An addict is charged approximately \$600 for one week's hospitalization and six week's post-hospitalization treatment.

POST-HOSPITALIZATION CARE:

The Integrators Foundation program involves the post-hospitalization care discussed above.

RESULTS:

The Integrators Foundation program cannot be scientifically evaluated because of a lack of sufficient documented information. The Foundation claims to have been "successful" with 18 per cent of their addict-patients.

ALAMEDA COUNTY PROGRAM OF NALLINE TESTING

In 1956, the city of Oakland, under the auspices of its police department, initiated a program of Nalline testing for narcotic addicts. The program had two phases:

1. Persons arrested and suspected of using narcotics are requested to submit to a Nalline test.
2. Persons convicted of narcotic addiction were subjected to regularly scheduled Nalline testing as a condition of probation.

The Commission was advised that the program was the cooperative effort of the police, the District Attorney's Office of Alameda County and the Probation Department.

The District Attorney indicates that their requests to have arrestees submit to Nalline testing were readily accepted.

"Our police officers have tried to develop an approach to the suspected addict of helpfulness, rather than an overbearing attitude which might result in flat refusal to take the test. This has resulted in more than 95 percent of those brought in accepting the test without hesitation." (Hederman, Albert E., Deputy District Attorney, Alameda County, in *The Nalline Test and Its Use In the City of Oakland*, November 1958, Office of District Attorney, Alameda.)

The Police Department has issued statistics indicating that there has been a marked decline in the crime committed in the community.

"District Attorney Frank Coakly of Alameda County informed the committee that since the use of the Nalline test the number of crimes attributed to narcotic addicts has decreased 40 to 50 percent." (Report of the Senate Interim Committee on Narcotics, Senate of the State of California, June 1959, pg. 25.)

The following table indicates the extent to which criminal behavior has declined since the initiation of Nalline testing.

The municipal courts of Oakland have accepted the Nalline test result as evidence of narcotic use:²⁹

"They cooperated . . . whereby this evidence would be admitted in court and would be utilized thereafter as a condition of probation."³⁰

Upon conviction, the addict is committed for a minimum of 90 days to the Santa Rita Rehabilitation Center. During the probation period which followed (from 3 to 5 years), narcotic use detected by means of the Nalline resulted in immediate recommitment.

The statistics involving narcotics offenses do not show an associated trend of decline with the initiation of Nalline testing. The number of heroin felony cases (possession, sale, etc.) declined from 70 in 1955 to 26 in 1959; whereas, the cases involving misdemeanor offenses (addiction) increased from 33 in 1955 to 63 in 1959.³¹

²⁹ People v. Williams, 164 Cal. App. 2d Supp. 858.

³⁰ Hederman, Alfred E., Jr.: op. cit.

³¹ Figures obtained from Office of District Attorney, Alameda County.

There is no basis, therefore, to conclude from the available statistics that the Nalline testing program has *caused* a decline in criminal behavior in Oakland.

"A number of factors, some of them conflicting, affect these figures. For example, in 1955-56, a major reorganization of the Oakland Police Department took place. The impact of the Cahan³² and other decisions was felt in 1955 and in succeeding years. The Nalline Program was commenced in 1956. This, together with numerous other factors, make more statistics such as this difficult to evaluate."³³

SELECTED OFFENSES
OAKLAND POLICE DEPARTMENT ARRESTS
1955 and 1959

Offense	1955	1959	Percentage Change
Robbery	731	422	-38
Burglary	3094	2600	-16
Auto. Burglary	1062	423	-60
Auto. Clout	877	624	-29
Prostitution	267	---	-29

NOTE: Nalline testing program began in 1956.

SOURCE: Narcotics Addiction and Nalline, A New Approach to Detection of Narcotics Addiction, Oakland Police Department.

REHABILITATION OF DOCTOR ADDICTS IN CALIFORNIA

The claim is often made that addicts are incurable and that the rate of successful treatment and cure is very small. The Commission has learned, however, that remarkable success has been achieved by the California Board of Medical Examiners in the rehabilitation of physicians who have been found to be addicts.

The Board of Medical Examiners has the power to revoke or suspend the license of a physician found to be addicted or of prescribing drugs for his own use. In cases where the Board believes that a cure is possible, after a comprehensive investigation as to the extent of his involvement with narcotics, the physician's license is revoked, but the execution of this revocation order is suspended for five years. The physician is placed on a form of probation for this period, during which he may not use or prescribe narcotics. The doctor may also be required to submit to treatment for his addiction. The attending physician is required to submit reports as to the addict-physician's progress. He must also submit quarterly reports as to his compliance with the Board's probationary terms and appear at least once a year before the Board.

A study was made as to the success of this method of treatment and control as to the forty-nine physicians who were granted probation between 1948 and 1952. Forty-five physicians in this group successfully completed their five years of probation without becoming readdicted to the use of narcotics.³⁴ Four physicians from this group had their licenses to practice revoked because they had returned to the use of narcotics. The Commission believes that this record of 92 percent suc-

cess in rehabilitating addicts has not heretofore received the public recognition it deserves.

The California Board of Medical Examiners should be commended for the outstanding achievement it has recorded in its efforts to rehabilitate the members of the medical profession who have become addicts.

THE ROLE OF THE BUREAU OF NARCOTIC ENFORCEMENT

The Budget Act for 1960 states that the Commission shall "review the relative roles of state and local enforcement of narcotics laws". For that reason, a study was made of the operation and the effectiveness of the Bureau of Narcotic Enforcement.

It is the conclusion of the Commission that the Bureau of Narcotic Enforcement plays a vital role in the investigation and coordination of cases involving state-wide narcotics traffic. Similarly, the work of the Bureau of Narcotic Enforcement in conjunction with the United States Customs Service and the Federal Bureau of Narcotics is a most important and essential adjunct in the overall investigations involving national and international narcotics traffic.

During this year, many major arrests have been made in California by teams of federal, state, and local officers after joint investigation involving in some cases the pooling of state and federal funds in order to purchase narcotics for use as evidence. Most of the cases which were the product of the joint efforts of agents from the Bureau of Narcotic Enforcement and representative of federal agencies were prosecuted in the federal courts because of the availability of stronger punishment under the federal laws (prior to the enactment into law of the Regan-Dills Act).

The Commission was also advised that cases initiated and investigated solely by agents of the Bureau of Narcotic Enforcement have been presented to the federal authorities for prosecution under federal laws for the same reason (the availability of longer prison terms than under the then existing California law).

The Commission believes that the welfare of the state would be seriously jeopardized if the complete responsibility were placed on local law enforcement agencies to work alone on the narcotics problem, which generally has many state-wide ramifications and often involves the coordination of simultaneous intercity and intercounty investigations.

During the year that the Commission has devoted to the preparation of this report, representatives of federal, city and county law enforcement agencies were invited to participate in the Commission's study sessions. Without exception, it was indicated by these national and local officials, who are most directly concerned with the narcotics problem, that an excellent spirit of cooperation in the handling of narcotics cases exists between their agencies and the Bureau of Narcotic Enforcement.

The Commission was advised that some cities and counties in California, because of their small population, do not have trained narcotics officers. In such communities, the Bureau of Narcotic Enforcement is requested to assist in investigating narcotics activity. In addition, the Bureau of Narcotic Enforcement conducts training courses concerning the investigation of narcotics cases which are available to law enforcement officers from every city and county in this state. These training

³² See page 43 of this report for discussion of the Cahan decision.

³³ Report to the Commission by Office of District Attorney, Alameda County.

³⁴ Jones, Louis E.: "How 92% Beat the Dope Habit," Bulletin of the Los Angeles County Medical Association, April 3, 1958.

courses are of particular value and importance to those communities which do not have qualified personnel or a budget to present a local training program on narcotics.

A STUDY OF THE EFFECT OF THE CAHAN AND PRIESTLY DECISIONS ON NARCOTICS CASES

At the request of the Special Study Commission on Narcotics, the District Attorney's Office, County of Los Angeles, conducted a six month study to determine the effect of the Cahan and Priestly decisions (see discussion, page 43) on narcotics cases. Los Angeles County was chosen for this study because it has the most serious narcotics problem. It was also felt that the results of this study would be representative of the statewide picture. The following statistical information was obtained from the survey:

During the six month period from August 1, 1960, through January 31, 1961, a total of 1,859 felony narcotic cases were brought to the attention of the Office of the District Attorney of Los Angeles County. Of this group, a total of 1,357 were processed and final disposition determined.

Approximately 8 percent of the total processed cases were rejected by the District Attorney's Office, dismissed by the Court or resulted in an acquittal, based on the Cahan or Priestly decisions. There were 117 cases in which the Cahan case led to release of the defendant, and 11 cases in which the Priestly decision was a factor.

FELONY NARCOTIC CASES AFFECTED BY CAHAN OR PRIESTLY DECISIONS (BY INDIVIDUAL) OFFICE OF DISTRICT ATTORNEY, LOS ANGELES COUNTY

August 1, 1960-January 31, 1961

	Total No.	Disposition at Each Phase of Judicial Process			
		Complaints D.A.'s Office	Preliminary Hearing by Magistrate	Under Penal Code Sec. 995	Court or Jury
Total Number of Persons Involved	1,420	1,859	1,043	173	866
Found Guilty	688	---	---	---	688
Held	---	1,405	980	136	---
Released	732	454	63	37	178
Released Due to Cahan	117	41	16	22	38
Released Due to Priestly	11	10	---	1	---

Summary

Percent of all cases processed released due to Exclusionary Rule—8.0 percent.

SOURCE: Administrative Service Div., Office of District Attorney, Los Angeles County, February 6, 1961.

NOTE: Excludes 439 cases for which there had not been final disposition by January 1, 1961.

A STUDY FROM THE SUPERIOR COURT IN LOS ANGELES OF THE DISPOSITION OF ALL CASES INVOLVING THE SALE OF NARCOTICS FOR 1959

As part of its evaluation of the adequacy of our present laws to cope with the narcotics problem, the Commission made a study of the disposition of all the cases from the Superior Court in Los Angeles County involving the sale of narcotics for the year 1959. This study consisted of a review of the probation reports for each of the 232 cases wherein

the defendants were sentenced by this court as adults, for the sale of narcotics.

The probation reports were studied to determine the type of background information available to the court on each defendant on the date set for probation and sentence.

It was felt that by studying certain factors that appeared in each report, it might be determined if there was a pattern of traits or characteristics which appeared more commonly in those peddlers who were sentenced to the state prison or who received probation or a county jail sentence. Accordingly, the following factors were investigated: age, family ties, residence, education, addiction or use of narcotics, employment, prior police record, prior narcotics records, prior convictions, report of contact by probation officer with the police, police recommendation to the court for leniency or severity, and the recommendation of the probation officer.

This study revealed the following facts:

1. All narcotics peddlers who had a prior conviction of any narcotic offense (except addiction) which was pleaded and proved were sentenced to the state prison (this involved 84 of the cases studied).
2. A total of 12 heroin peddlers did not receive state prison sentences. Of these, nine received misdemeanor sentences to the county jail ranging from six months to one year; two received jail terms as a condition of five years probation; and one was granted straight probation for a period of three years (without any jail term). It is interesting to note that all three persons granted probation indicated no narcotic use.
3. A total of 49 marijuana peddlers did not receive state prison sentences. Of these, 23 received straight county jail (or misdemeanor) sentences, without probation; 19 received jail sentences as a condition of probation, and seven received probation with no jail term.
4. The vast majority of the heroin peddlers studied who were sentenced to the state prison (83 out of 101 or 82.2%) were *users of heroin* or *addicted* to the use of heroin. The majority of the heroin peddlers studied who were sentenced to the county jail or who received probation were *not* users of heroin and *not* addicted to this drug. (7 out of 12 or 58.3%).³⁵
5. The majority of the marijuana peddlers who received probation or who were sentenced to the county jail were *not* users of heroin or addicted to this drug. (44 out of 48 or 91.7%).
6. Those peddlers with the least education were more likely to go to prison. 94% of the heroin peddlers with less than a high school education were sentenced to prison. 70% of the marijuana peddlers with less than a high school education went to prison.
7. Over 90% of those peddlers with prior convictions (either misdemeanor or felony) went to state prison.
8. In 91.0% of the cases involving heroin peddlers wherein the probation officer recommended against probation, the court sentenced the defendant to the state prison (101 out of 111 cases).

³⁵ These statistics would seem to indicate that the courts are *not* lenient with *addict-peddlers* or the so-called "victims of the traffic."

9. In only one out of three of the cases involving heroin peddlers, was the recommendation of the probation officer for probation or a county jail sentence disregarded.
10. In 78 out of the 160 cases studied wherein the defendants were sentenced to the state prison, there was no report of any contact by the probation officer with the law enforcement agency which handled the case and which presumably would have full knowledge to the extent of the defendant's involvement in narcotics activities.
11. In those cases where there was a report of contact with the police, no recommendation as to punishment or sentence to the probation officer was made by the law enforcement agency handling the case in 73 of the 160 cases studied wherein the defendant-peddlers were sentenced to the state prison.
12. There was a recommendation for *severity* in only 6 of the 160 cases wherein the defendant-peddlers were sentenced to the state prison by the law enforcement agency handling the case.
13. In 2 of the 160 cases wherein the defendant-peddlers were sentenced to the state prison, the law enforcement agency handling the case recommended *leniency*.
14. In 19 of the 61 cases studied, wherein the defendant-peddler received probation or was sentenced to the county jail, there was *no* report of *any* contact by the probation officer with the law enforcement agency which handled the case.
15. In 5 of the 61 cases where the defendant-peddler received probation or a sentence to the county jail, the law enforcement agency handling the case recommended a *severe punishment*.
16. In 8 of the 61 cases wherein the defendant-peddler received probation or a sentence to the county jail, the law enforcement agency handling the case recommended *leniency*.
17. In 29 of the 61 cases where the defendant-peddlers were given probation or sentenced to the county jail where there was a report of contact between the probation officer and the law enforcement agency handling the case, there was *no* recommendation as to punishment or sentence by the police.
18. 83.1% (132 out of 160 cases) of those defendant-peddlers who were sentenced to the state prison were either single or separated. 75.4% (46 out of 61 cases) of those defendant-peddlers who were given probation or sentenced to the county jail were either single or separated.
19. Each of the 25 judges of the Superior Court who handled all the heroin peddling cases studied, sentenced a majority of the peddlers to the state prison in 1959. 15 of the 25 judges sentenced all the heroin peddlers who appeared before them to the state prison.
20. Half of the 24 judges who handled all the marijuana peddlers, sentenced at least half of such cases to the state prison.

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The Superior Court

LOS ANGELES 12, CALIFORNIA

January 3, 1961

Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento, California

Re: Report of Special Study
Commission on Narcotics

Dear Governor Brown:

Representatives of various news media have asked for the views of our court with respect to the report of your Special Study Commission on Narcotics. I asked Judge Lewis Drucker of our criminal division to review the report with me and have related the results of this review in various interviews. I am taking the liberty of detailing these views to you for whatever interest they may be in the light of the current session of the Legislature. At the outset may I express to you and to the members of the Commission our appreciation for the thoroughness of the study and its excellence. We have found it to be realistic and practical.

There are a few areas wherein our views differ to a degree from the conclusions of the Commission. May I mention these.

1. Confinement of Addicts. Preliminarily, may I say that we agree that compulsory institutional confinement of all addicts in a drug-free environment is essential. However, not all persons who are addicted and who have committed crimes should be imprisoned. In the report of Dr. David P. Ausubel, M.D., Ph.D., of the University of Illinois, of September 4, 1959, copies of which were distributed by Mr. H. J. Anslinger, Federal Commissioner of Narcotics, it is pointed out "the criminal activities of drug addicts are largely incidental to their addiction, and should not be judged on the same basis as other crimes."

Dr. Norman B. Atkins, M.D., in his review of the problems of narcotic addiction and the findings of the Addiction Research Center of the National Institute of

Mental Health states in speaking of heroin addicts:

"A dose or cap is expensive and it takes from four to six to keep an addict supplied for a day. The need to always keep pouring out more and more money to obtain the amount of the drug needed leads to stealing, prostitution and small time peddling of marijuana and heroin. This is the usual extent of addict delinquency. It is a common misconception that crimes of violence and sexual orgies result from narcotic consumption. Even in desperate attempts to obtain a supply the addict with his passive personality is more apt to connive than to act with aggression and violence." (See also the report "Some Myths About Marijuana" by Dr. J. D. Reichard, M.D., Medical Director, Retired, of United States Public Health Service, who for seven years (1939-1946) was Medical Officer in charge of the narcotic hospital at Lexington, Kentucky, to the effect that crimes of violence and aggression are not due to the action of marijuana as commonly supposed.)

2. Criminally Aggressive Addicts. We are in complete accord that state prison is the place for the criminally aggressive person with a record of anti-social activities who also happens to be an addict. Many criminals have turned to narcotics and the mere fact that they have added addiction to their other misdeeds should not entitle them to escape state prison. As Dr. Harris Isbell, Chief, Addiction Research Center, National Institution of Mental Health, Public Health Service Hospital, Lexington, Kentucky, stated in his report (Public Health Service Publication No. 94, page 3), "criminals are quite likely to become addicts since they move in the underworld where other criminals are actually selling narcotics and looking for new customers. This does not mean that the use of drugs directly causes crime but only that criminals frequently abuse drugs. Neither does it mean that all addicts are criminals; many are not."

We believe, therefore, that there should be a thorough screening of all addicts who are charged with crime so that a determination may be made as to whether or not the individual is primarily a criminally aggressive person with a record of anti-social activities. If he is, then he should be handled in the same manner as other criminals. If the person does not fit into this category, then we believe that the criminal proceedings should be adjourned and a civil commitment made for compulsory institutional treatment in a drug-free environment as recommended by Dr. Ausubel. This same procedure should apply to this type of addict whether he is charged with a misdemeanor or a felony.

3. Maximum Security Medical Facility. For those addicts requiring maximum security we would recommend a facility similar to the medical facility of the Department of Corrections at Vacaville.

4. Minimum Security Medical Facility. All other addicts would be committed to a minimum security facility similar to the Los Angeles County Sheriff's Honor Farm at Castaic or the minimum security portions of the Institution for Men at Chino.

5. State Board of Corrections. We believe that these medical facilities for the civil commitment of addicts should be placed under the control of the Department of Corrections rather than the Department of Mental Hygiene as recommended in the report of the Commission so as to give every assurance possible of both security and of a drug-free environment. We believe that addicts should be segregated from non-addicts in both prison and other types of detentional facilities in order to avoid contamination of others. Custodial officials advise us that even non-addict prisoners become predisposed to narcotics through contacts with addicts in custody, so that upon their release they, too, turn to narcotics.

6. Indeterminate Commitment. Federal hospital authorities recommend a minimum commitment of four and a half months for treatment of narcotic addicts. We believe the minimum should be for not less than six months, and that the commitment should be for an indeterminate duration with the addict to be returned to the court when the medical staff of the institution believes that the addict is ready to be returned to the community. The court would then determine if immediate release would be in the best interests of the addict and society and, as suggested in the report of your Commission, would make appropriate orders governing the person while on parole from the institution.

The Commission report has stressed how important mandatory supervision, control and followup treatment are in the release of addicts from institutions. This is likewise stressed by prominent members of the United States Public Health Service such as Dr. Kenneth W. Chapman in his report of December 1, 1958 (page 324). "Such problems as housing, jobs, and someone to discuss problems with are of great significance." Such post-institutional care should contain adequate provisions for maximum supervision on parole, Nalline tests, supportive treatment in the community and return to institutional care upon failure to integrate into the community.

7. Civil Commitments. We are in hearty accord with the Commission that adequate provision should be made for the narcotic addict who is not processed through the criminal courts. We should not require that a person first commit a crime before any facilities be made available to combat his addiction. We are inclined to believe, however, that civil commitments should be to the two types of institutions mentioned above under the control of the Department of Corrections for the reasons indicated. These commitments would be made through the regular processes of the Psychiatric

Court upon application of the addict, his relatives or friends, a doctor or peace officer.

8. Exclusionary Rule. The report recommends the retention of the exclusionary rule adopted by our Supreme Court in the Cahan case but only insofar as a man's "castle," his home, is concerned. We subscribe to the view that the rule in its entirety should be retained. Federal law enforcement agencies have operated under the exclusionary rule for many years and our police can do likewise. To ask for its repeal by legislation, even though limited to narcotic cases alone, is to invite back the invasions of the rights and liberties of individuals which led our Supreme Court to adopt the rule. The Supreme Court considered these violations of individual liberties as a greater threat to our people than the evils sought to be corrected.

9. Search Warrants. We agree thoroughly that the procedure for the securing of search warrants should be simplified and that greater use of such warrants should and could be utilized by the police. We agree that there is need for the preservation of the anonymity of informers in narcotic law enforcement. We recognize, however, that where the only crime with which a defendant is charged is one in which the informant was either a witness or a participant in the offense this anonymity cannot legally be preserved if a timely demand is made for a disclosure of the informant excepting by a dismissal of such charge.

The Commission proposes that a police officer not be required to disclose the identity of the informant at the time of securing a search warrant. We are fearful that this may lead to abuse, and we believe that the police should make a full disclosure to the magistrate. However, we hope that the same goal can be reached by making the information concerning the identity of the informant confidential, placing it in a sealed file of the magistrate and available only to a reviewing court; all other information on the affidavit and warrant to be public. This is a slight departure from the procedure recommended by the Commission, but to our minds is a most important one if research should indicate that this proposal is legally possible.

10. Penalties. While finding generally that the present penalties for narcotic offenses are adequate, the Commission recommends that the law be amended to require the presently provided minimum terms to be served "in custody." As we all know, under California's indeterminate sentence law the State Adult Authority fixes the term of imprisonment for all persons committed to prison within the limits prescribed by the Legislature for the particular offense committed by the individual. It may release the defendant on parole after he has served a minimum of one-third of his sentence in custody.

Whatever may be thought concerning the length of the term of sentence imposed by the Adult Authority on narcotic

law offenders, the practice of the Authority of providing that a substantial portion of such term be served while on parole from the institution is a sound practice in our opinion. This is because of the necessity of maintaining close supervision over narcotic addicts upon their release from institutions as we have previously indicated.

The records of the federal hospital at Lexington, Kentucky show that of all the addicts released from the hospital those who had been committed to the hospital as paroled federal prisoners made the best record from the standpoint of abstinence from narcotics after release. To quote Dr. James V. Lowry, Medical Officer in charge of the Hospital, in a report published by the United States Public Health Service in December 1956, "it was this group that received the most post hospital supervision and could not leave the hospital until there was a set plan for job, place to live, parole adviser, etc."

Despite the criticism which has been levied against our State Adult Authority for supposed leniency in the length of terms imposed by them upon narcotic law offenders, we should point out in passing that up until 1958 the average time served by narcotic offenders in California exceeded that of federal narcotic law offenders.*

It should also be borne in mind that the federal authorities concentrate on prosecution of large dealers in narcotics, whereas the vast majority of cases which come before our state court judges are those dealing with so-called "small fry" addict peddlers. Thus, equating state sentences with federal sentences now being imposed under the provisions of the Federal Narcotics Control Act of 1956 is not justified. Many injustices would result if we were to provide for mandatory minimums even as suggested in the Commission's report.

Penalties were increased in 1953 and 1954, but this has not decreased the number of narcotic addicts in and out of prisons and jails. On the other hand, we have contaminated our prisons and jails with narcotic addicts and thus have increased and spread narcotic addiction. This explains to a minor degree at least the reports that a majority of narcotic offenders have had delinquency problems prior to their use of narcotics because of their close contact with addicts in detention facilities.

The punitive approach cannot be the answer to narcotic addiction except for the criminally aggressive person who is also an addict for whom, as we have pointed out, there is no alternative but prison. With this conclusion practically all

* 1958 Federal Prisons Report -- Federal Bureau of Prisons, California Prisoners 1958-1959 - Report of the Department of Corrections.

federal authorities are in agreement. Even Mr. H. J. Anslinger, Federal Commissioner of Narcotics, has stated that the federal programs for long-term mandatory sentences "are not directed at the addict."*

We believe that under our existing laws the Adult Authority can effectively deal with peddlers and pushers if the extent of their operations are fully made known to them.

11. Retention of Judicial Discretion. The Commission's report emphasizes the need for retaining judicial discretion in sentencing so that justice may not be "by the numbers" but based on the facts of each individual case. While proposing a stern and strict form of justice, admittedly necessary to cope with the scourge of narcotics, the report does not propose a type of mandatory sentence procedure which would ride roughshod over the rights of individuals with utter disregard of the facts and circumstances of a given case. Thus, the right to grant probation is retained in the courts so that it may be utilized in the exceptional case where necessary to do justice.

The report eloquently points out what the effect has been where a state attempts to provide for mandatory long-term prison sentences without any rights of probation or parole, an approach being demanded by many sincere but uninformed persons, and an approach, incidentally, which not even the federal narcotic law attempts. Michigan went the whole route and provided for mandatory long-term prison sentences without any right of probation or parole, and as the Commission's report indicates its judicial system is suffering from these extremes and judges and prosecutors are required to resort to devious routes to circumvent and to avoid the "cruel and inhuman punishment" which the rigid and inflexible application of the new Michigan penalty statutes would otherwise exact.

In contrast, as the report shows, Ohio amended its laws to provide for long-term prison sentences but significantly retained in its judges the right to grant probation and to impose county jail sentences as one of the conditions thereof in appropriate cases. The report also does a fine job in pointing out the much greater magnitude and the complications of the narcotic problems faced in California as compared to the problems which existed in Ohio and Michigan.

12. Classification of Drugs. At the last session of the Legislature marijuana was segregated from other narcotics, although the identical penalties were prescribed for both classes of drugs. We believe that a distinction should be

*Letter of Mr. Anslinger to Judge Drucker of February 19, 1959

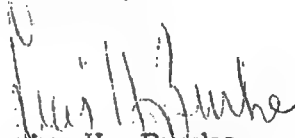
maintained between marijuana and drugs readily accessible from drug stores on the one hand and heroin and other derivatives of opium on the other. We believe that the penalty provisions for possession of the latter should be substantially higher than with respect to marijuana.

The report suggests a new type of offense be established similar to the law in Michigan making possession of narcotics for sale a separate and distinct crime from possession of narcotics for use. We believe this would be a valuable addition to the law. It would help to distinguish between the "pusher for profit" and the "small pusher for use."

13. Federal Responsibility. The report properly places the primary and major responsibility to reduce the flow of narcotics into the state upon the federal government where it belongs. Although the federal government, through congressional investigations and in other ways, has taken notice of the problem, very little of a constructive nature has been done at the federal level to discharge this responsibility.

I am taking the liberty of sending copies of this memorandum to the members of your fine Commission as a means of expressing to them our appreciation of their efforts and of releasing copies to other persons who have asked us to express our views on this subject.

Sincerely,


Louis H. Burke
Presiding Judge

**PROPOSED PUBLIC HEALTH NARCOTICS PROGRAM
B U D G E T**

	<u>1st Year</u>	<u>2nd Year</u>
Public Health Medical Officer III	\$15,288	\$16,056
Behavioral Scientist	14,556	15,288
Public Health Medical Officer II	-	13,200
Pharmacologist	-	-
Research writer	-	-
Assistant Chemist	-	-
Laboratory Assistant II	-	-
Health Education Consultant	7,008	7,356
Intermediate Stenographer	(1) 4,194	(2) 8,598
Intermediate Typist-clerk	-	-
Associate Statistician	-	8,112
Sub-total	<u>41,046</u>	<u>68,610</u>
5% General Pay Increase	2,052	3,430
Associated Salary Costs	3,879	6,480
Equipment	5,698	4,000
Operating Expense		
General Expense	350	1,700
Communications	1,000	3,000
Travel	3,000	6,000
Out-of-State travel	-	1,000
Building Operations	750	2,000
Health Education Material	2,500	15,000
Technical & Scientific	-	3,500
Rent	1,800	3,000
Contractual Research	-	75,000
Sub-total	<u>\$ 9,490</u>	<u>\$110,200</u>
TOTAL	<u>\$62,075</u>	<u>\$192,720</u>

BUDGET FOR AUGMENTED PROGRAM

1. One experienced Public Health Medical Officer, Grade III or higher, with background in administration, public health practice, epidemiology and research methodology. It is essential that this individual have an interest in the narcotics addiction problem, and, if possible, the individual should have had prior experience in some aspects of the narcotics problem.
2. A competent behavioral scientist who has demonstrated competence in research design and who has an interest, and preferably experience in the field of narcotics addiction.
3. One Health Education Consultant to accelerate the health educational activity now being performed, and to exert leadership in developing a coordinated scientific, sound and effective approach to the narcotics problem through health education. Such a person would maintain active liaison with designated representatives of other State agencies concerned, local health departments, and any other organizations who for one reason or another become involved in the narcotics addiction problem.
4. One stenographer clerk, intermediate, to perform routine clerical duties.

The salaries of these individuals for the fiscal year beginning July 1, 1962, would be \$41,046, and it is estimated that an additional \$21,029 would be needed for travel expenses, materials, etc. Depending on the recommended avenues of approach that would be developed during Phase I, the program would be expanded by Phases in successive years. Based on past experience, we estimate that the costs of this program for Fiscal Year 1963-64 would be \$242,137.

Providing you concur with the establishment of the program as visualized in this report, we estimate that in Phase I, beginning in July, 1962, the following personnel should be authorized to increase the tempo of the activities now performed, to coordinate more intensively with other governmental agencies and to begin an exhaustive study of the problem in order to point the way in which funds should be spent in the several aspects of the program as visualized.

Although time does not permit us to explore the establishment of such a program in the depth which we would desire, we visualize the objectives of such a program to encompass at least the following:

a. Health Education

A considerable amount of the control efforts would be directed toward the education of the groups involved such as school children, teen-agers, teachers, parents, the medical and allied professions, the clergy, authority figures, and others. Within these groups there are sub-groups based on age, race, economic status, occupation, level of education, etc.

b. Research

As mentioned previously, this phase of the program would be concerned with the collection of scientific evidence both in the laboratory and in field, aimed at identifying multiple factors of causation and their relationship so as to establish the natural history of this "disease". Only by the collection of scientific evidence can programs be launched which would result in prevention and control of this disease. The Department already has undertaken an active research program in related areas such as alcoholism and general population morbidity. Because of the experience and skill developed in identifying problem groups and etiology of disease causation as well as the organization of the department to facilitate applied research, this Department would be in an advantageous position to plan and implement such study. Our research efforts would be directed toward the evaluation of present and proposed treatment and rehabilitation, as well as pharmacologic, physiologic, psychiatric, educational and other approaches to the problem using the Division of Research to coordinate the efforts of the other relevant Divisions.

c. Prevention

The ultimate goal of the program would be the prevention of the misuse of narcotics. Based on past experiences in the control of other diseases, it seems likely that prevention will be accomplished piecemeal as successful avenues of approach are discovered; for example, finding populations at risk of becoming addicted by studying not only addicts but "normal" populations.

d. Treatment

As the program develops, it probably would be necessary to establish both clinics and in-service facilities for the treatment and rehabilitation of addicts. Whether such clinics and in-service facilities should be the responsibility of the medical profession generally or of governmental agencies deserves careful evaluation in close coordination with representatives of organized medicine, the allied medical professions, and hospital organizations.

SUMMARY:

In summary, I recommend:

1. That with the present funds and personnel allocated to the Department of Public Health, we continue our present program and begin to plan an expanded program as follows:
 - a. The purchase and circulation of audio-visual materials through our Film Lending Library. As the Commission points out, there is a dearth of good materials on this subject. Additional funds would permit purchase of more titles as they become available.
 - b. The provision of information to local health departments on suitable printed materials available from other sources.
 - c. The provision to local departments and other State agencies, of copies of materials published by this Department for distribution to special groups and to the public at large. Currently we have a pamphlet "Recommended Procedure for Narcotic Use Testing of Probationers and Parolees" for physicians.
 - d. The referral of persons who request materials to local departments and other sources. Most of our requests come from teachers and students. In order to provide a better service to teachers, we have compiled a bibliography of books, journal articles and pamphlets. The bibliography is currently being reviewed in the State Department of Education and will be made available to health departments, schools and interested groups.
 - e. The publication in California's Health of articles concerning the narcotic addiction problem and program developments.
 - f. The development of ways and means to involve the local health departments in the narcotic addiction problem.
2. That the Department of Public Health be charged with the responsibility of establishing a long-range program concerned with the medical aspects of the narcotics problem in California. The basic philosophy of the establishment of such a program would be not unlike that which resulted in the establishment of the Division of Alcoholic Rehabilitation in the State Department of Public Health. Furthermore, within the New York State Department of Health, there is a Bureau of Narcotics Control in the Division of Special Health Services.

I wish to emphasize that the recognition that narcotics addiction is a medical as well as a legal problem and the establishment of the medical aspects of a narcotic addiction control program within our Department is only a first step. Prevention and control of narcotics addiction will not be accomplished without an extremely careful study of all of the factors involved and will certainly require research in many broad areas as well as the closest coordination with other governmental agencies.

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- (11) Report of the Senate Interim Committee on Narcotics, State of California. June 1959, p. 64.
- (12) "New York's Health". 1960 Annual Report of New York State Department of Health. p. 313.

RECOMMENDATION #14

We are heartily in accord with the spirit of this recommendation and visualize the study of not only primary grades school children, but also many other subgroups in the total population as part of the epidemiologic approach to the narcotics control program. The selection of the specific samples to be tested and their controls should be determined as part of the total planned research program. It is premature, at this time, to commit ourselves to any particular sample size and design.

While it is tempting to assume that imparting information regarding the dangerous effects of narcotics would provide children with knowledge which in turn would be translated into action (i.e., determination not to use narcotics), there is little evidence to support this hypothesis.

On the other hand, it may be that an educational program could be designed which would lead to an ultimate reduction in the rate of use of narcotics providing such an educational campaign were a part of a total program which took cognizance of all factors which seem to be involved, such as the cultural mores of certain ethnic groups, home and neighborhood environment, attitudes of those adults who strongly influence the actions of young people, availability of narcotics, etc.

RECOMMENDATION #8

In general, I am completely in accord with the proper use of all varieties of communication media with the object of imparting information concerning the medical aspects of the narcotic problem; however, there is a considerable body of evidence that factual presentation of scientific information, even if skillfully handled, is not entirely effective unless it is part of a total program. Furthermore, unless program material is designed and presented with each specific audience in mind, in terms of age, cultural characteristics, education and interest, such efforts will not produce the desired results. For example, the approach that one would take toward a teen-age group from the lower economic level of our society would be considerably different from that produced for an adult and more sophisticated audience.

In its May 10, 1956, report to the United States House of Representatives Committee on Ways and Means, the Subcommittee on Narcotics, on the Elicit Traffic in Narcotics, Barbiturates and Amphetamines in the United States, stated that: "The subcommittee is convinced that the public generally does not fully understand the viciousness of drug addiction nor the seriousness of the proportions of this addiction. Recommendations were presented during the public hearings that an educational program be instituted in the schools to make students aware of the evils of narcotics. However, careful consideration by the subcommittee of the efficacy of such an educational program has led to the conclusion that it would tend to arouse undue curiosity on the part of the impressionable youth of our Nation unless undertaken with extreme caution. Many young persons, once their curiosity is aroused, may ignore the warning and experiment upon themselves with disastrous consequences.

The subcommittee is therefore opposed to direct routine education of our youth and we are supported in our views by the United Nations Commission on Narcotic Drugs and by Narcotics Commissioner Harry J. Anslinger, who recommends against any such educational program. It is urged that medical groups and others who are in positions of responsibility dealing with drug addiction make every effort to bring to public light the viciousness of this addiction. It is believed that the availability of authoritative information as distinguished from a formal education program will accomplish the necessary public awareness without stimulating juvenile curiosity. An aroused and informed public, in this case, as in all other problems of national concern, is the major factor in effectively dealing with the problem."(1)

In addition, there is reason to believe that lack of knowledge concerning effects of narcotics is not a major cause in the development of addiction; physicians and nurses as a group should be and probably are the most knowledgeable regarding the dangers inherent in the use of narcotics and yet addiction among physicians and nurses is reported to be higher than in the general population. (2, 3)

In summary then, part of the total program should certainly include health education efforts; just how these efforts should be directed and integrated into the total control program is controversial and should be carefully studied prior to embarking on a program which might lead to disappointing results.

As an incidental remark, it is noted that throughout the recommendations in the Report of the Special Study Commission on Narcotics reference is made to "narcotics and dangerous drugs". It will be necessary to further define which "dangerous drugs" the Commission had under consideration and this element of the Report will be discussed in greater detail in the following comments concerning Recommendation #9.

RECOMMENDATION #9

I am entirely in accord with this recommendation. So far as I am aware, there is presently no well-prepared printed material concerning narcotics or dangerous drugs, that is available for distribution to the general public upon request. We have not produced and distributed such material in the past because the Department has never considered that it had clear-cut responsibility to do so. Information of this sort would be somewhat less difficult to produce than educational material aimed at changing attitudes and habits of captive audiences, since individuals who have sufficient interest in the narcotic problem to request information are not only desirous of being educated but ordinarily are somewhat more educated and informed than the public at large.

The use of the term "narcotics and dangerous drugs" in this and most of the other recommendations presents some real difficulties. "Narcotics" is accurately described in Division 10, Chapter 1, Article 1, Sections 11001-11003.1 of the California Health and Safety Code by listing the drugs included within this term.⁽⁴⁾ "Dangerous drugs" are defined in Section 4211, Article 8 of the Business and Professions Code as any drug unsafe for self-medication except preparation of certain drugs designed to feed or treat animals and poultry.⁽⁵⁾ Division 21, Chapter 2, Article 1, Section 26255 of the California Health and Safety Code generally defines "drugs" as habit forming, toxic, etc., if the drug is one of those listed under paragraph (1), Section 26254 of the same code or if because of its toxicity or potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for such use except under the supervision of a practitioner licensed by law to administer such drugs.⁽⁴⁾

It is suggested that in defining terms of references for implementation of this and other recommendations in the Report, "drug addiction", using the definition of addiction of the Expert Committee on Addiction-Producing Drugs of the World Health Organization, be re-defined as ". . . a state of periodic or chronic intoxication, detrimental to the individual and to society, produced by the repeated consumption of a drug (natural or synthetic).

". . . Three qualitatively different types may be recognized, the characteristics of which are:

"Opiate addiction, of which morphine addiction is the prototype, has three major components: tolerance, physical dependence, and emotional (psychic or psychological) dependence. Tolerance, the need for an increasing dose to produce an effect, is an inevitable accompaniment of opiate addiction but does not develop equally to all effects nor necessarily parallel to physical dependence. . ."

"Cocaine addiction has as its chief characteristic emotional (psychic or psychological) dependence. Tolerance does not develop, there is no physical dependence, and consequently no abstinence syndrome follows withdrawal of the drug. There may be a drive or compulsion to continue taking the drug, depending upon the degree of psychic dependence"

"Marihuana (cannabis), like cocaine, produces emotional (psychic or psychological) dependence only"

"The amphetamines (benzedrine, d-amphetamine) also produce only emotional dependence"

"Barbiturate addiction is characterized by emotional (psychic or psychological) dependence, physical dependence, and partial tolerance, but it implies habitual consumption of amounts far in excess of usual therapeutic doses"

"Meprobamate, as well as other hypnotics, may produce an addiction with the same characteristics as the barbiturates." (6)

Since it is apparent that the various classifications of drugs which would produce "addiction" will present problems which are quite different both in terms of groups involved as users and in the effects of these drugs on the users, it is suggested that the attention of all the State agencies and departments concerned be initially directed toward the control of those drugs which will produce "opiate addiction" (category 1 above).

RECOMMENDATION #10

While this Department is willing to undertake the preparation of a manual for physicians, setting forth the current methodology for withdrawing a patient from the use of narcotics, before such a step is undertaken, a determination needs to be made whether withdrawal therapy should in fact be encouraged and permitted by any licensed practitioner who desires to do so, or whether such therapy should be performed only by specially trained physicians and staffs in designated clinics and hospitals. Such a manual should be prepared in close collaboration with selected representatives of the California Medical Association and other official and non-official agencies having a valid interest.

The Council on Mental Health of the American Medical Association in its 1956 Report on Narcotics Addiction recommended that : "... the American Medical Association continue to study the narcotic laws with the view of further clarification of the rights and duties of physicians and allied professional persons in the handling of addicts. The phrases in the current law '...in the course of professional practice only' and 'prescription', remain vague and confusing, despite Supreme Court decisions." (7)

Further attention to the confusion that exists regarding doctor narcotic addict-patient relationships was given by the State of New York Joint Legislative Committee in its 1959 Narcotic Study. This Committee noted that "... With notable individual exceptions, the medical profession, as a whole, has ignored the plight of the addict and has sometimes attributed its lack of interest in addiction to so-called 'repressive policies' of the Federal Bureau of Narcotics. The medical profession itself can and should do a great deal more than it has been doing in terms of its interest in addiction, the training of physicians and other health personnel in matters relating to addiction, and in developing procedures to safeguard a physician's treatment of addict patients. It is recommended that county or state medical societies develop procedures whereby a physician who wished to treat an addict could do so if a special board of the physician's colleagues agreed that it was in the best professional interest for the physician to treat the addict. This procedure would make aboveboard what is now almost furtive and would insure that addicts who were being treated without this professional sanction would be regarded as being treated illegally. Just what 'medical ethics' are in the case of the drug user must be explicated by the medical profession." (8)

We also noted in the report by the California Citizens' Advisory Committee to the Attorney General on Crime Prevention (March 26, 1954) that the Committee recommended "Treatment. 9. Upon a medical determination that a person is an addict, he shall be institutionalized for a period of at least 90 days, during which time the patient will be withdrawn from narcotics and exposed to an over-all educational and psychiatric program.

"10. On release from this institutional treatment, the patient will be assisted by outpatient supervision. Here the patient will receive benefit of all reasonable conceivable therapy. It will include psychological, sociological, economic, cultural and other elements in an effort to determine the narcotic-proneness of the individual."(9)

It must be recognized that there is considerable controversy among the medical profession concerning the efficacy of present methods of treatment:

The American Medical Association, in its Report on Narcotic Addiction, stated that "Lack of knowledge of the results of treatment is a very serious matter. Without such data it is impossible to determine the success of the treatment program or to plan intelligently for changing the mode of treatment or to select these patients on whom effort should be concentrated."(10)

Drs. Norman Graff, Chairman of the Legal Aspects of Psychiatry Committee for the Northern California Psychiatric Society, and Joel Forte, of the Berkeley Mental Hygiene Clinic, in their testimony before the California Senate Interim Committee on Narcotics, June 1959, stated that further studies were necessary to develop adequate medical handling of narcotic addicts. (11)

At this writing I am more inclined toward exploring the possibility of restricting withdrawal therapy to specified clinics and hospitals whose staffs are specially trained and qualified in the performance of this phase of medical practice.

RECOMMENDATION #11

In order to implement this recommendation in its entirety, this Department would have to publish a large book and would, in effect, be duplicating many of the texts now available to physicians. I feel certain that the Commission did not realize the full implication of this recommendation and the cost that would be involved in furnishing such a volume to the 24,377 licensed physicians in California.

I suggest that the intent of this recommendation could be easily and inexpensively accomplished by including a statement calling attention to the general problem and a limited, up-to-date bibliography as part of the section on narcotics in the annual directory which is prepared and distributed to all licensed physicians and surgeons by the California Board of Medical Examiners.

RECOMMENDATION #12

I am thoroughly in accord with the recommendation for the creation of an Interdepartmental Committee on Narcotics under the direction of the Attorney General to coordinate the activities of those departments and agencies of the State which have some responsibility in connection with the narcotics addiction problem.

There is considerable controversy whether the narcotic addiction problem is primarily a concern of the medical profession or of law enforcement personnel. In the American Medical Association Report on Narcotic Addiction, the following excerpts relate to this problem area:

"Psychiatric Factors: There is a general agreement among all students of addiction that addicts have personality aberrations and that these psychiatric conditions preceded and played an important role in the genesis of addiction, its maintenance, and the high relapse rate after treatment. (Note the possible relationship with socioeconomic factors, particularly unstable family structures, in the development of such personality disturbances.)

"The kinds of personality disturbances associated with addiction are chiefly character disorders, inadequate personalities, and neuroses. Gross psychotic disturbances are not common among addicts." . . . (10)

"It is a common popular belief that opiates per se (apart from the phenomenon of physical dependence) directly incite otherwise normal persons to violent assaultive criminal acts, including sexual crimes. This view is not tenable. Opiates are quieting drugs that repress hostile urges, create a passive, dreamy state and depress sexual drives. On the other hand, the opiates are valuable to criminals in other ways. They allay anxiety and, therefore, supply a kind of a 'dutch courage' which may be valuable to criminals in the commission of certain acts such as petty thievery. It is particularly important to note that this 'dutch courage' is achieved without any great deterioration in mental ability or manual dexterity, such as is induced by alcohol and other drugs. It is well proved that many addicts resort to crime in order to obtain funds for drugs so as to prevent withdrawal symptoms.

"Do opiates make criminals, or do criminals use opiates? This is an important question on which diverse views are held.

"Law enforcement officers usually state that the majority of addicts were criminal or delinquent prior to addiction." . . . (10)

... "On the other hand, one can find statements that most addicts were not delinquent and did not engage in crime prior to becoming addicted. These widely varying opinions may be due to differences in the outlook of the various investigators, the characteristics of the populations of the addicts from which the samples were drawn, and differences in the criteria of criminality prior to addiction. Actually, there is truth in both views." . . . (10)

"Sociological factors seem to be of great importance. Addiction in the United States involves, at this time, chiefly, minority groups. The most important foci of addiction are found in areas of large cities in which housing is poor, structure of families are unstable, and economic opportunities are limited. These areas have not only high addiction rates, but also high rates of alcoholism, delinquency, crime, and mental disease. A purely medical approach to addiction may, therefore, not be sufficient for a complete solution of the problem." (10)

The Interim and Final Reports of the Joint Committee of the ABA and AMA on narcotic drugs had this to say:

"On the question of how to deal with drug addiction there are two opposing schools of thought. The Federal Bureau of Narcotics and its supporters regard addiction to narcotic drugs as an activity that is properly subject to police control. With the growth of addiction in the United States since World War II, increasingly severe penalties have been incorporated into both federal and state laws, and the distinction between the peddler of drugs and the user of them has grown smaller and smaller. The advocates of this punitive approach argue that crimes committed by addicts are a direct result of the drug; they also contend that most addicts were criminals before they became addicted.

"Critics of this view regard addiction as disease, or something akin to it, for which punishment is inappropriate. They argue that many addicts become criminals in order to get money to buy drugs, since there is no way in which they can obtain them legally and the cost of illegal procurement is high. This state of affairs, they contend, encourages the spread of addiction among criminals and juvenile delinquents who have easy access to drug peddlers. From this point of view, drug addiction is primarily a problem for the physician rather than for the policeman, and it should not be necessary for anyone to violate the criminal law solely because he is addicted to drugs." (7)

It is apparent from the foregoing that an essential first step in launching a State Program, a clear definition of the responsibility of each State agency concerned is urgently needed. I would suggest, however, that these statements of responsibilities of each Agency or Department concerned be developed under the direction of your office rather than by an Inter-departmental Committee on Narcotics.



STATE OF CALIFORNIA
Department of Public Health

2151 BERKELEY WAY
BERKELEY 4, CALIFORNIA

October 6, 1961

C
O
P
Y

Honorable Edmund G. Brown
Governor of California
Governor's Office
State Capitol, First Floor
Sacramento 14, California

Dear Governor Brown:

Subject: Narcotic Control Program

Selected members of my staff and I have reviewed the "Final Report of the Special Study Commission on Narcotics" with particular attention to those recommendations which would require partial or complete implementation by the Department of Public Health.

As you know, some of their recommended actions would be relatively easy to accomplish. Certain of the recommendations, such as those related to research and therapeutic activities, are more difficult to assess, and any actions taken to implement them would require considerable effort because of the complexity of the problem and the necessity to involve a number of governmental and other agencies in planning action programs. The complexity of this problem is illustrated by the bibliography on Drug Addiction prepared in 1960 by the University of California, Berkeley, relating to the legal, medical, psychological, and regulatory aspects of drug addiction, published since about 1930 and is 130 pages long with an estimated 1300 listings. We have outlined what we consider to be a basic program if we were to be given the responsibility for the medical aspects of it.

My views regarding the implementation of specific recommendations contained in the Report relating particularly to the Department of Public Health are presented in the attachments numbered to correspond with the recommendations in the special study report, and concluded by a summary statement which includes a proposed budget.

Very sincerely yours,

Malcolm H. Merrill, M.D.
Director of Public Health

cc: Mr. Arthur L. Alarcon ✓

THE "CLINIC" PROPOSALS

A solution to the narcotic problem which continually recurs in various forms is the proposal that narcotics be legally dispensed to addicts.^{1/2/3/} There are two basic variations in the proposals for legally dispensing narcotics. One, the "ambulatory" treatment of addicts would grant physicians latitude to freely prescribe narcotics to addicts; the other, "the narcotic clinics" calls for the creation of special facilities for the dispensal of narcotics to addicts.

1/ "The addict should be able to obtain his drugs at low cost under Federal Control, in conjunction with efforts to have him undergo withdrawal." (Report on Drug Addiction by New York Academy of Medicine, Bulletin of the New York Academy of Medicine, August 1935, Vol. 31, No. 8 - 522-607.)

2/ "The first step in any plan to alleviate this dreadful affliction (addiction) should be the establishment of Federal Control and dispensation - at cost - of habit-forming drugs." (Vollmer, A.: The Police and Modern Society, Berkeley 1936.)

3/ "Though short-lived, clinics (established in the United States) demonstrated that addicts furnished drugs at reasonable prices resumed their places in society as useful, law-abiding, self-supporting citizens . . . can as much be said for the system of narcotic drug control that has replaced these 'failures'?" (Howe, Hubert S.: An Alternative Solution to the Narcotic Problem, Law and Contemporary Problems, Winter 1937.)

of their drug needs, and efforts to persuade them to undergo rehabilitation should be continued."

(Report on Drug Addiction by the New York Academy of Medicine, op. cit.)

"The fact that the addict will be placed in contact with a physician will be a major victory in many cases and will go a long way toward eventual rehabilitation."

(Belson, J., in NARCOTICS, USA, Edited by Paul B. Weston, Greenberg - Publisher, 1952.)

(3) Legal dispersal of drugs to addicts is humane and economical since drug addiction is incurable.

"Why not accept the fact that addiction is incurable and then go on to deal with the problem . . . much of this enormous cost (of addiction by trials, imprisonment, etc.) borne by the taxpayer could be abolished if drugs were available to addicts at the legitimate price."

(Dr. J. Ross MacLennan, Vancouver, Testimony before Canadian Parliament, Special Commission on Traffic in Narcotic Drugs - Proceedings, March - June, 1955.)

(4) Legal dispersal of drugs to addicts would enable some addicts to resume their place in society as socially useful citizens.

"The one point of view that has never been officially accepted in the United States is that some addicts can be, and remain useful and law-abiding citizens if they can be provided with their minimum requirements. There is much evidence, as a matter of fact, that many chronically addicted persons are able to carry on their occupations and meet their responsibilities if continuously allowed a small amount of narcotic drug at a price they can afford."

(Hove, H. S., A physician's blueprint for the management and prevention of narcotic addiction, New York State J. Med., February 1, 1955, p 341 - 350.)

(5) Legalizing dispersal of narcotics would make narcotics less attractive to youths.

"If drugs were legal they would lose their glamour and adolescents would not be attracted to them as they are now. Some addicts claim too, that having learned to like narcotics, they resent the legal prohibition and are all the more determined to get them."

(Stevenson, G. H.: Arguments for and against the legal sale of narcotics. THE BRITISH, Vancouver Medical Association, Vol. XXXI, January 1953, p 177 - 188.)

(6) Legalizing dispersal of narcotics would reduce crime caused by the addict's need to maintain his habit.

"It should be remembered that every addict will get his drug. Under the present laws to do that he must 'push, rob, steal, burglarize or commit forgery'. For, he is desperate when he is without his drugs."
(New York Academy of Medicine, op. cit.)

OPPOSITION TO LEGAL DISPENSAL OF DRUGS

The great bulk of expert opinion is unalterably opposed to legal dispensal of narcotics to addicts. The arguments advanced by those opposed to legal dispensal are:

- (1) Legal dispensal of narcotics was tried and proven to be a failure.

"The clinics were operated for varying periods and in one city as long as 4 years. The most comprehensive series of facts, having real scientific value, that had been compiled anywhere in the world, was embraced in the published statistics gathered from analytical study of the nearly 6 000 cases of addiction registered and cared for in narcotic clinics during about 10 months by the Department of Health of the city of New York. These cases were subjected to most careful observation and study by specialists qualified to make scientific analysis and arrive at sound conclusions. They reported, 'we have given the clinic a careful and thorough as well as a lengthy trial and we honestly believe it is unwise to maintain it any longer.'

(Anellinger, H. A., and Tompkins: Narcotic Clinics in the United States in THE TRAFFIC IN NARCOTICS

- (2) Legal dispensal of narcotics will create new addicts.

"... prior to the passage of the Harrison Narcotic Act in 1914, when there was no illicit market and narcotics could be bought for pennies over the counter, the rate of drug addiction was five to eight times the current rate. Thus, if we removed all legal restraints and thereby managed to eliminate the illicit trade in narcotics, there is every reason to believe that the

population of drug addicts would be increased at least five-fold."

(Kusubel, D. P., Controversial Issues in the Management of drug addiction: legalization, ambulatory treatment, and the British System - paper read at American Psychological Association, September 6, 1959.)

"... it seems unlikely that furnishing drugs to addicts legally will stop the formation of new addicts. It might very well enhance the spread of addiction, since the same social factors which presently are associated with addiction will continue to operate despite its source of narcotics."

(Council for Mental Health, American Medical Association, J. of American Medical Association, Vol. 163, November 30, December 7, December 14, 1957)

(3) Legal dispersal of narcotics to addicts would undermine treatment of addiction.

"To protect patients from themselves and from their well-meaning but misguided families, it is the writers firm conviction that laws pertaining to mental health should be strengthened. Hospitalization and complete treatment, consisting of withdrawal, rehabilitation and re-education should be made compulsory for all habitual users of drugs."
(York, O. B., THE BANE OF DRUG ADDICTION, Macmillan Co., 1934.)

"Withdrawal of drugs from narcotic addicts on an outpatient or office basis should not be undertaken; it almost surely will fail . . . In the treatment of addiction, short hospitalization for withdrawal without a prolonged period of institutional rehabilitation is as futile as simple detoxification for chronic alcoholism."
(Vogel, V. E., Isbell, H. and Chapman, R. W. op. cite.)

"Compulsory institutional treatment in a drug free environment is essential . . . !"
(Kusubel, D. P., op. cite.)

(4) Legal dispersal of narcotics is not workable as such proposals fail to take into account increased physiological tolerance to the drug.

"It is one of the certain facts about heroin use that larger and larger doses are required, because of the peculiar mechanism of 'tolerance'. To get the desired effect the dose has to be steadily increased. Unless the 'clinic' is to sell the addict as much narcotics as he requests, he must go to illegal sources for the amount he wants."
(Stevenson, G. H., op. cite.)

(5) Legalizing dispersal of narcotics will not reduce its allure.

"It greatly oversimplifies matter to attribute all of the glamour of drugs to their unlawful status: alcohol, cigarettes, cosmetics and automobiles are not illegal and still hold great fascination for youngsters."
(Auerhel, D. P., op. cite.)

"The argument that if drugs were legal they would lose their glamour and would not appeal to adolescents is very questionable. Legal sales of alcoholic beverages has not made them unattractive to our youth. There is no reason to think that the predisposed persons who become today's addicts, and who became so in adolescence or early childhood, would not have become drug users if narcotics had been legally procurable. Supportive evidence for this assertion is that 75% of this series of narcotic addicts had already become heavy users of alcohol . . . even though alcohol was legally available."
(Stevenson, G. H., op. cite.)

(6) Legal dispersal would not undermine illegal drug traffic.

"In New York State alone when 16 or more narcotic clinics were in operation throughout the state, almost 4,000 ounces of narcotic drugs were seized in illicit channels during a year - or almost as much as was seized in the entire United States during 1952."

(Amelinger and Tompkins, op. cite.)

"This surmise (legal dispersal would eliminate illegal traffic) sounds as if it might be theoretically correct except for the fact that legal sale, under whatever form, never has defeated the illegal traffic. Legal sale in China and other Asiatic countries went parallel with illegal sale."

(Stevenson, G. B., op. cite.)

(7) Legal dispersal of narcotics would not measurably prevent crime associated with drug use.

"There is very grave doubt that permitting addicts to receive drugs legally would actually result in good employment results or any sizeable diminution in crime. The 'narcotic clinic' experiment in the United States gave no support to these theories. Moreover, detailed studies of the employment and delinquency records of British Columbia addicts indicate that these poor records are not the result of narcotic use, but largely preceded their use of narcotics."

(Stevenson, G. B., op. cite.)

"It is possible that a proportion of addicts might do this (cease criminal activities). However, the basically hostile, anti-social psychopath could be expected to continue in his criminal activities regardless of whether or not he is receiving drugs."

(Council of Mental Health, American Medical Association, op. cite.)

(8) Legal dispersal of narcotics would not enable persons to lead otherwise socially useful lives.

"The belief that addicts whose drug demands are satisfied lead 'otherwise normal and productive lives' is based on a myth which applies at most to a tiny fraction of the total addict population; namely, successful professional persons, usually physicians who take small doses to relieve anxiety. Most of these persons have long since switched to tranquilizers which are both more efficient for the purpose and not proscribed by law."
(Aucubel, D. P., op. cite.)

"The idea of establishing clinics for narcotic addicts where the addict can be furnished narcotics cheaply intrigues many people. Proponents of the idea naively assume that the person is quite normal as long as he can obtain narcotics. They should talk to doctor addicts who point out how their whole lives are meaningless except for one thing - and that is getting a shot four hours from now. Family, children, friends, and patients mean nothing to them. For example, in delivering a baby they will nonchalantly cut through into the rectum with no sense of remorse whatsoever."
(Guinn*, William F., Narcotic Addiction in Physicians, BULLETIN, Los Angeles County Medical Association, Vol. 88, No. 7, April 3, 1958)

(9) Legal dispersal of narcotics could be an infringement on the morality of society.

*Dr. Guinn was, at that time, the Secretary-Treasurer of the Los Angeles County Medical Association.

"Legalization would give drug addiction an unfortunate modicum of moral sanction that would encourage its spread among potential addicts."

(Ausubel, D. P., op. cite.)

"We believe the thought of permanently maintaining drug addiction with 'sustaining' doses of narcotic drugs to be utterly repugnant to the moral principles inherent in our laws and the character of our people." (Treatment and Rehabilitation of Narcotic Addicts, Report of the Committee on the Judiciary, U. S. Senate, containing findings of the Subcommittee on Improvements in the Federal Criminal Code, 84th Congress, 2nd Session, Rep. No. 1950, Washington D. C., U. S. Government Printing Office, 1956.)

In summary, it should be mentioned that the United States Senate,^{4/} the United States House of Representatives,^{5/} the Canadian Senate^{6/} and various state commissions^{7/} have considered and rejected the idea of legal dispersal of narcotics to addicts.

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- ^{4/} Senate Report No. 1950, 84th Congress, 2nd Session: Treatment and Rehabilitation of Narcotic Addict, Report of the Committee on the Judiciary, U. S. Senate, containing findings of the Subcommittee on Improvement in the Federal Criminal Code, pursuant to S. Res. 67 and S. Res. 166.
 - ^{5/} Illicit Traffic in Narcotics, Barbiturates and Amphetamines in the United States. Report to the House Committee on Ways and Means from the Subcommittee on Narcotics, Washington, D. C., U. S. Government Printing Office, 1956.
 - ^{6/} Proceedings of the Special Committee on Traffic in Narcotic Drugs in Canada, Rep. No. 1-15, The Senate of Canada, Ottawa, Ontario, Canada, Edmund Cloutier, 1955.
 - ^{7/} Illegal Narcotics . . . A Pattern of Evil, Narcotics Investigation Commission to Our 70th General Assembly, State of Illinois, March 25, 1957.

THE BRITISH SYSTEM

Whenever any proposal for legalizing the dispersal of narcotics to addicts is raised, the question of Great Britain arises. Proponents of "narcotic clinics" are of the opinion that a system which permits dispersal of narcotics to addicts exists in England and, as a consequence, the narcotic problem there has been eliminated.

There appears to be considerable misconceptions about narcotic control in Great Britain. In actuality, the system of narcotic control in Great Britain, albeit with some marked differences, is on the whole quite similar to the practice in the United States. Both countries subscribe to the same international conventions; both have enforcement programs to restrain illegal traffic in narcotics. Narcotic control practice in Great Britain in no way resembles the "clinic" system proposed for the United States.

There are some who have studied the narcotics control in England who are of the opinion that it is a misnomer to characterize English narcotic control as a special system.

"The British, incidentally, do not look with favor on references to the British system. They feel that the nature of their problem and what they consider a simple collection of administrative practices do not justify the designation "system" a term which they point out was invented by Americans."
(Harimore, C. U. and Brill, R., The British Narcotic System Report of Study, NEW YORK STATE J OF MED, Vol. 60, No. 1, January 1, 1960.)

The essential difference in narcotics practice is the role which the medical profession plays with respect to the treatment of narcotic addicts. In the United States, the medical profession is dormant. It does nothing, primarily because there are no prescribed operating ground rules to guide it. It is particularly cautious because of the legal action which has been taken against medical practitioners who have dispersed narcotics to addicts even though, except from a few flagrant cases of prescription selling, the physician has eventually been vindicated.

Dr. Alexander Knox, representing the California Medical Association, synthesized the physician's attitude to the Commission: "The Harrison Drug Act takes management and control of narcotics addiction out of the medical profession

and puts it into the head of law enforcement" . . . "the only doctors handling addicts are those in public institutions and a few doctors with shady practices. The average doctor is afraid of the penalties under the Harrison Drug Act."

In Great Britain, the physician does have a defined range of activities permissible by law. The British doctor or dentist may prescribe minimal dosages of narcotics when he is withdrawing his patient from addiction, when it has been demonstrated that abrupt abstinence threatens the life of his patient and when the narcotic is necessary for that patient to lead a normal life.

British narcotic control is defined in The Dangerous Drug Act of 1951 and the statutory power enabling physicians to dispense narcotics is contained in the memorandum entitled "THE DUTIES OF DOCTORS AND DENTISTS UNDER THE DANGEROUS DRUGS ACT AND REGULATIONS". The pertinent sections authorizing dispersal of drugs are the following:

"(1) Precautions in the treatment of addicts. 51. In the preceding section, the conclusion has been stated that morphine or heroin may properly be administered to addicts in the following circumstances; namely, (a) where patients are under treatment by the gradual withdrawal method with a view to cure, (b) where it has been demonstrated, after a prolonged attempt at cure, that the use of the drug cannot be safely discontinued entirely, on account of the severity of the withdrawal symptom produced, and (c) where it has been similarly demonstrated that the patient, while capable of leading a useful and relatively normal life when a certain minimum dose is regularly administered, becomes incapable of this when the drug is entirely discontinued."

(Excerpt from The Duties of Doctors and Dentists Under the Dangerous Drugs Act and Regulations, British Home Office, D.D. 101, 6th Ed., London, Her Majesty's Stationery Office, 1931.)

Administration of narcotics control in Great Britain is the responsibility of the Home Office. The following section of the memorandum on DUTIES OF DOCTORS AND DENTISTS, defines the limits allowed to physicians and is the guideline for enforcement of violations by the Home Office.

"7. The authority granted to a doctor or dentist to possess and supply dangerous drugs is limited by the words SO FAR AS MAY BE NECESSARY FOR THE PRACTICE OR EXERCISE OF HIS PROFESSION. In no circumstances may dangerous drugs be used for any other purpose than that of ministering to the strictly medical or dental needs of his patients. The continued supply of dangerous drugs to a patient solely for the gratification of addiction is not regarded as "medical need". (Duties of Doctors and Dentists, op. cite.)

Doctors who fail to conform to regulations are subject to a fine and a maximum prison sentence of ten years.

To facilitate enforcement of narcotic control, doctors and dentists are required to maintain records of all narcotics obtained and dispersed to patients. Any prescription involving a narcotic must be in writing, dated, signed and bear the name of the patient.

The Home Office is assisted in administration of narcotic enforcement which involves physicians by the National Health Service of the Ministry of Health, Regional Medical

offices. The Regional Medical Offices urge all physicians to obtain consultation with another doctor before prescribing narcotics. They attempt to convince physicians that it is desirable that addicts be hospitalized for withdrawal from physiological dependence upon narcotics.

The Regional Medical Offices, in routine visits, check the dangerous drugs register of each doctor. This register contains information on all drugs obtained and all prescribed. If there are irregularities, the Health Service is able to take appropriate action.

The fact that physicians in Great Britain almost invariably report all addicts under treatment to the Home Office has led to an erroneous impression that there is a registry of addicts in Great Britain.

In addition to enforcement of narcotic regulations for physicians, the Home Office regularly checks drug manufacturers, pharmacists and wholesalers. The larger cities maintain small special narcotic squads.

**THE APPLICABILITY OF
THE "BRITISH SYSTEM" TO THE UNITED STATES**

There is disagreement whether the system of narcotic control practiced in Great Britain is applicable to the United States. Two doctors, who visited Great Britain and made an intensive study of narcotic control there, doubt if the same approach could be applied to the United States.

"The theoretic freedom that British physicians have under the law to prescribe narcotics, while not taken advantage of widely, still is not believed applicable for adoption in the United States. The operation of the National Health Service of England, which practically prevents patients from going freely from one physician to another, effectively deters addicts from obtaining drugs from more than one physician at a time. The absence of such a deterrent in the United States is in itself a compelling reason not to introduce the British System in this country."
(Larimore, G. W. & Brill, H., op. cite.)

Another authority doubted that the British System would be necessary for Canada.

"When one sees the way addicts improve in weight and in their general health following discontinuance of narcotics, and how much better they are able to work, one realizes the lack of need for such over-cautious handling of addicts as is the custom in England."
(Stevenson, G. H., op. cite.)

The view that the British approach is not advisable for the United States is shared by the Federal Bureau of Narcotics^{9/} and D. P. Ausubel.^{9/}

There are some observers of the British System who are of the opinion that it would be advantageous to adopt a similar approach in the United States.

"Since about 1940, the writer himself has periodically suggested that an adaptation of the British idea be tried in this country.

* * * * *

The obvious advantages of this system are that it removes the major motives for peddling narcotics and for the creation of new users, puts pressure on the addict to seek medical care and removes his incentive to engage in crime."
(Lindesmith, A. R., Traffic in Dope, NATION, April 25, 1956)*

Dr. Lindesmith is joined by M. Schur^{10/} in advocating that the United States model narcotics control after the British.

^{9/} Comments on Narcotic Drugs; Interim Report of the Joint Committee of the American Bar Association and the American Medical Association on Narcotic Drugs by Advisory Committee to the Federal Bureau of Narcotics, July 1958.

^{9/} Op. cite.

^{10/} Schur, M., Drug Addiction in American and England, COMMENTARY, September 1960.

* Note: These arguments and their answers are discussed in relation to the "clinic" system previously in this report.

THE BRITISH SYSTEM AND THE NARCOTIC PROBLEM

There is general agreement that there is less of a narcotic problem in Great Britain than there is in the United States. There is no agreement as to the reasons for the differences between the two countries.

It has been expressed that the type of narcotic control system in Britain has been a primary cause in reducing the addiction rate; Lindesmith, Schur, Kalb, among others, (for reasons already discussed here) are of this opinion.

The view that the low addiction rate in Great Britain is not related to the system of narcotic control practiced there also has strong adherents.

"The favorable British narcotic situation is not the result of the British narcotic control system.

If it is not the system, then what is it?
. The answers lay with the British people themselves The British have a definite abhorrence of narcotic drugs, which has become incorporated into their mores and culture.

In England what appears to be the major gap in the epidemiologic picture, probably for cultural reasons, is the susceptible individual."

(Larimore, G. W., and Brill, H., op. cite.)

"Thus, it would be more reasonable to conclude that the low rate of addiction in the United Kingdom exists despite rather than because of the British system, and that if the system were substituted for more stringent methods of control in countries where the population is more vulnerable to drug abuse, it would greatly increase the incidence of addiction."
(Ausubel, D. P., op. cit.)

It should be mentioned that there does not appear to be general good results obtained with the "British System". Hong Kong, operating under the identical narcotics control system as Great Britain, has an appalling high rate of addiction.

The total number of addicts in Hong Kong is unknown, "some would place the total as high as 200,000 to 250,000. More conservative estimates are in the neighborhood of 150,000 to 180,000."
(The Problem of Narcotic Drugs in Hong Kong, a White Paper laid before Legislative Council, November 11, 1959.)

THE ROLE OF PHYSICIANS IN THE NARCOTICS PROBLEM

A recurring argument that is found among the proponents of legal dispensing of narcotics to addicts is that the "clinic" system would be a means for greater involvement of the physician in the treatment of the addict.

Many of those opposed to legal dispensing of narcotics to addicts are of the opinion that there is need for some change in restriction placed upon the doctor.

"It may very well be that the regulations concerning dispensing of drugs to addicts have been interpreted and enforced too rigidly. A physician who furnishes an addict a small quantity of narcotics to tide him over until he reaches an institution, or who gives an addict narcotics so that he can arrange his affairs prior to entering a hospital for treatment is in danger of being charged with a violation of the law, despite the fact that he may be acting in what he regards as the best interest of his patient. The Council, though realizing that it might be very difficult to devise a system which would prevent all possible abuse, feels that the regulations should be altered to cover situations of this sort."

(Council on Mental Health, American Medical Association, op. cit.)

One factor which hampers physician involvement in the treatment of the addict is the lack of adequate facilities in the community.

"A major weakness in current efforts to treat and rehabilitate drug addicts is the almost complete lack of follow-up or post-hospitalization facilities on the community level."

(Committee on the Judiciary of the United States Senate containing the Findings and Recommendations of the Sub-Committee on Improvements on the Federal Criminal Code, Bulletin on Narcotics, United Nations, Vol. VIII, No. 3, July-September 1956.)

As previously stated, medical opinion has been overwhelmingly opposed to dispensing of narcotics to addicts. The most respected authorities state that treatment of the addict should begin with confinement of the addict for "detoxification". Dr. Laurence Kolb, former Chief of the Division of Mental Hygiene, United State Public Health Service, suggests a compromise program which permits greater physician latitude without creating a program of unrestricted drug dispensing to addict, the essential features of which are the following:

"Medical opinion should have controlling force in a revamped policy. This is not to say that every physician should be authorized to prescribe opiates to addicts without restrictions. Some would be dishonest, others would be indifferent to consequence. Neither should the old type

of clinic be re-established. A workable solution would be to have the medical societies or health department appoint competent physicians to decide which patients should be carried on an opiate while being prepared for treatment and which ones should be given opiates indefinitely. Physicians would report individual cases to local medical groups for decision."

(Kolb, L., Let's Stop the Narcotic Hysteria, SATURDAY EVENING POST, July 29, 1956.)

RECOMMENDATIONS MADE BY
MEMBERS OF THE COMMISSION

Mr. Lee
Mr. 22
no

1. To recommend the enactment of legislation to permit the trial judge to determine, in chambers, if the disclosure of the name of an informant would be helpful to the defendant and whether the public interest would suffer by such disclosure.

yes

2. To recommend the enactment of legislation to permit any law enforcement officer to inspect a vehicle for contraband in exchange for the privilege to operate a vehicle, based on the theory that while a man's home may be his castle, his automobile is not.

yes

3. To recommend simplification of search warrant procedures and paper work similar to the methods employed in San Diego including the use of affidavit forms which can be filled in in longhand by the officer to avoid delay and eliminate the need to go to the District Attorney's office.

yes

4. To recommend passage of a bill introduced by Senator Jacob Javitz and Congressman Victor Arfuso in Congress to provide for grants-in-aid consisting of one-half the cost of each patient to states having a hospital for the treatment of narcotics addicts.

yes

5. To recommend the enactment of legislation providing for a long period of mandatory supervision and control of addicts released from our state hospitals after a civil commitment.

6. To recommend the necessary appropriation to purchase a spectrophotometer for the use of the Bureau of Narcotics Enforcement to be used in the testing of material to determine if it is marijuana.

7. To recommend an increase in the appropriations for the Bureau of Narcotics Enforcement for the purchase of illegal narcotics to be used as evidence against narcotics peddlers. Such an increased appropriation is necessary because certain agencies do not consider a peddler to be operating at the "management" level unless he sells three ounces, or more. Under present budgetary limitations the Bureau of Narcotics Enforcement cannot afford to purchase heroin in such a quantity, although the peddler with whom they are dealing may be ready, willing and able to sell three ounces or more.

8. To recommend that District Attorneys cooperate with the Adult Authority by sending in replies to requests by the Adult Authority for recommendations regarding the disposition of parole hearings.

The practice of some counties is to ignore the notice of parole hearings. Other counties recommend a denial of parole in every case.

9. To recommend legislation which would make it mandatory for all law enforcement agencies to provide the Adult Authority with a report concerning the entire background of a prisoner - including reports from other agencies, his entire arrest record, and the existence of other charges or cases or other crimes attributable to the defendant.

10. To recommend longer periods of parole for prisoners who have a history of addiction so that such prisoners may be closely supervised and controlled to prevent readdiction.

11. To recommend that no distinction be made in the sentencing or in the paroling of persons who are convicted of the sale of narcotics on the basis that such person is an addict or a non-addict.

12. To recommend the enactment of legislation appropriating sufficient funds so that a suitable state agency such as the Attorney General's Office or the Judicial Council ^{shall} prepare and distribute without cost a weekly digest of all Appellate decisions dealing with narcotics cases and involving the Exclusionary Rule to all judges ^{in California} ~~so that all judges~~ ^{may have} a quick, accessible ^{material} reference in this important field and to foster conformity in the rulings of the trial courts with these decisions.

13. To recommend ~~the enactment of legislation~~ ^{the D.D. Office} requiring a report from ~~all law enforcement agencies~~ for the use of the court and the probation department relative to the defendant's prior record, the full extent and nature of his criminal involvement, the existence of other crimes or charges against the defendant, and any other information which might assist the court in making a just disposition of the case.

14. To recommend active participation by the District Attorney in probation and sentence hearings where the probation report is in error or does not fully and accurately state all the facts concerning

the defendant's background and criminal involvement. Also there is a need for the District Attorney to speak out to rebut erroneous statements by a defendant or his attorney.

15. To recommend the enactment of legislation calling for state prison sentences for all narcotics peddlers whether addict or non-addict.

16. To recommend the enactment of federal legislation setting up mandatory supervision and control for an extended period of all addicts after their release from the federal narcotics hospitals (Lexington and Fort Worth) as a condition of the acceptance of such persons for treatment.

17. To recommend the enactment of legislation which would modify the Exclusionary Rule to permit the use in evidence of property taken pursuant to a search warrant although the property so taken is not the same as described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued. It should be noted that the filing of a false affidavit to secure a search warrant is perjury and is a felony under Penal Code sections 118 and 142.

18. To recommend the enactment of legislation permitting a private doctor to treat an addict so as to permanently rid him of his addiction providing there was proper administrative supervision and control and such doctor should be permitted to administer Nalline or any other similar anti-narcotic for the purpose of testing for re-addiction. Upon such re-addiction, however, the doctor should be required to refer the addict to the state authorities for treatment and control.

19. To recommend the enactment of legislation to set up a pilot half-way house for paroled narcotics addicts within the Narcotics Treatment Control Program as an intermediate step between prison and the home environment. Such an institution would be self-supporting with state parole agents supervising the addicts at night. This plan would help the addict adjust to the responsibilities of life back in the community, permit him to work and to pay his way, and at the same time permit everyday supervision to prevent readdiction.

Further study
NO

20. To recommend the enactment of legislation to create a pilot state narcotics hospital with research facilities (independent of the Department of Mental Hygiene) ~~and~~ with follow-up mandatory supervision and control and out-patient psychiatric treatment facilities.

Yes
How about
permanently voluntary
commitment
with agreement
to stay
Refer

Combine with No 3
" " No 4

21. To recommend the enactment of legislation placing narcotics addicts under the control of the Public Health Laws because of the infectious nature of narcotics addiction, thereby permitting immediate quarantine and isolation of all known addicts.

22. To ask the ~~President~~ ^{*Governor*} to declare 1961 as "Fight Narcotics ^{*religious*} Year" and to enlist the aid of all civic, fraternal and service ^{*state*} organizations in a massive nation-wide campaign of education for the prevention and control of narcotics addiction.

No 1.

MEMORANDUM

Subject: A DISCUSSION OF CHANGES IN OUR PRESENT LAWS
SUGGESTED BY VARIOUS GROUPS AND INDIVIDUALS

To: RESTRICTED TO MEMBERS OF THE SPECIAL STUDY
COMMISSION ON NARCOTICS

Pursuant to the request of the Commission, the undersigned has prepared a draft of some of the proposals which have been advanced by various public officials and other interested parties to cope with the problems related to the enforcement of the narcotics laws and the appropriate punishment therefore.

These drafts are not intended in any way to be construed as a reflection of the opinions expressed by members of the Commission (or of the project director) nor as tentative recommendations for the Governor or the Legislature. Instead these rough drafts in legislative form are submitted for discussion purposes only, and in order that the Commission will be in a position to report that it gave due consideration to all suggestions from all sources.

1. Proposed Change with Reference to Informers

A public officer cannot be examined as to communications made to him in official confidence, when the public interest would suffer by the disclosure, nor can he be required to disclose the source of any information tending to establish probable cause for an arrest, search and seizure, or for the issuance of a search warrant, and such evidence or testimony based on such information from an undisclosed informant shall not be struck where the privilege against disclosure is exercised and shall be admissible to establish probable cause for an arrest, search and seizure, or for the issuance of a search warrant. (New matter underlined) Code of Civil Procedure section 1881.5

Under the Priestly case an officer, who seeks to establish probable cause for an arrest, search, and seizure based solely upon information from an informer, must disclose the name of his informant upon request. If the officer exercises his privilege under Code of Civil Procedure Section 1881.5 and refuses to disclose the informant's name, the court will strike the officer's testimony, and if there is no additional evidence to establish probable cause for the arrest, search, and seizure, the case must be dismissed.

Many public officials have asserted that this rule should be changed by the legislature because the enforcement of the narcotics laws is being seriously handicapped because of the application of this rule. These persons argue that narcotics violations are not reported crimes. They are conducted surreptitiously. Law enforcement officers therefore must work through informers to get at the peddlers and pushers. In order to receive cooperation from informers, the officer must promise to protect their identity to avoid reprisals.

Assuming that the rule of the Priestly case is a mere evidentiary rule, and not a right protected by the Constitution, ⁽¹⁾ the suggested language if added to Code of Civil Procedure Section 1881.5 would nullify the effect of the Priestly decision.

(1) Since the California Supreme Court in the Galan case held that the Exclusionary Rule is one which the legislature may negate by simple legislative action, it would appear to follow logically that the rule requiring the disclosure of the names of informants can also be changed by simple legislative action, since the disclosure rule was created by the Supreme Court to implement the Exclusionary Rule.

Footnote (1) Continued

In Walt v. Colorado 338 U.S. 25 the majority of the United States Supreme Court held that Congress could negate the Federal Exclusionary Rule since it was not a part of the Constitution but a tool or a method by which the Court could make law enforcement officers obey the Constitution.

2. Proposed Change with Reference to the Exclusionary Rule

An act to add Section 11689 to the Health and Safety Code, relating to evidence in criminal actions and proceedings involving narcotic laws.

The people of the State of California do enact as follows:

Section 1. Section 11689 is added to the Health and Safety Code to read:

11689: In any criminal action or other proceedings commenced to enforce provisions of this division, all relevant, competent and material evidence not otherwise privileged, shall be admissible and no competent, relevant and material evidence shall be excluded because it was obtained by means of an unreasonable search and seizure or without a search warrant. Nothing in this section shall be construed to limit the right of any person to seek and obtain redress for any injury to his person or property or for the infringement of any of his rights.

In the 1959 legislature, the Senate passed the Grunsky Bill which sought to eliminate the Exclusionary Rule in narcotics cases only. The Assembly Criminal Law and Procedure Committee failed to pass the Grunsky Bill onto the Assembly floor. This bill was worded as follows:

"In any criminal action or other proceeding commenced to enforce provisions of this division, all competent, relevant, and material evidence, not otherwise privileged, shall be admissible. No competent, relevant, and material evidence shall be excluded because of the manner in which it was obtained.

Nothing in this section shall be construed to limit the right of any person to seek and obtain redress for any injury to his person or property or for the infringement of any of his rights."

The Los Angeles Narcotics program which was presented to Governor Brown this year by the Board of Supervisors, the District Attorney, the County Counsel, and the Sheriff in their attempts to bring about ^a special session on narcotics includes this same proposal.

The Governor and the Attorney General told these Los Angeles officials that the Grunsky Bill was probably unconstitutional. While the Governor and the Attorney General did not give any reasons for their opinion, the unconstitutional portion of the Grunsky Bill must be the following language:

"No competent, relevant, and material evidence shall be excluded because of the manner in which it was obtained".

The underlined portion of this proposal is so broad in scope as to encompass violations of the Due Process Clause, including forced confessions, and evidence obtained in a brutal and shocking manner (such as by forcing a defendant to submit to a stomach pump as in the Rochin case). Since evidence obtained in violation of the Due Process Clause is clearly unconstitutional and therefore inadmissible, the Grunsky Bill would surely be held to be unconstitutional. By substituting the words

"No competent, relevant, and material evidence shall be excluded because it was obtained by means of an unreasonable search and seizure or without a search warrant"

for the objectionable language contained in the Grunsky Bill (underlined above) the unconstitutional aspects would be eliminated.

Such a statute would be constitutional since the Cahan case provides that the Exclusionary Rule can be negated by simple legislative act. If the whole of the Exclusionary Rule can be wiped out, it would seem to follow that a part of it can be eliminated.

In Maryland the Legislature adopted the Exclusionary Rule after the Maryland Supreme Court had rejected it. Later the Maryland legislature passed an amendment to its Exclusionary Rule exempting certain crimes in certain counties from the operation of the Exclusionary Rule. This law was attacked as being unconstitutional and as denying equal protection of the laws. The United States Supreme Court held that this law was constitutional and not a denial of equal protection (*Salzburg v. Maryland* 346 U.S. 545).

In summary based on the language of the Supreme Court in the Cahan case, the Exclusionary Rule may be nullified by simple legislative action without the necessity for a constitutional amendment.

3. Proposed Legislation with Reference to Liability of Law Enforcement Officers for an Unreasonable Search and Seizure

Civil Code Section 52a (New Section)

Any person within the jurisdiction of this State is entitled to be free from unreasonable searches and seizures committed by any law enforcement officer.

Civil Code Section 52b (New Section)

Whenever any law enforcement officer makes an unreasonable search and seizure contrary to the provisions of Section 52a of this Code, such law enforcement officer shall be liable for each and every such offense for the actual damages and five hundred dollars (\$500) in addition thereto suffered by any person denied the rights provided in Section 52a of this Code.

In the Cahan case the Supreme Court stated that it was adopting the Exclusionary Rule because the private citizen had no other adequate remedy

against unconstitutional searches and seizures by law enforcement officers. The court stated that civil actions for damages for trespass resulted in nominal recoveries or uncollectible judgments. The Civil Code, in sections 51 and 52 provides for civil damages of at least two hundred and fifty dollars (\$250) for violations of civil rights involving discrimination with reference to the facilities or services of a business establishment. This same concept could be expanded to provide for a minimum recovery against any law enforcement officer (or, if necessary, against the municipality or agency employing such officer) who conducts an unreasonable search and seizure. This would insure that the private citizen was compensated for any violation of his rights to be free from unreasonable searches and seizures. In addition, the threat of such a fine would discourage law enforcement officers from committing unreasonable searches and seizures. If the agency itself were also liable, it would probably crack down on any officer who was guilty of such unconstitutional activity. If the Exclusionary Rule were to be modified or nullified without providing for an additional remedy such as proposed above, the United States Supreme Court might crack down on California for not providing an effective remedy for a violation of the right to be free from unreasonable searches and seizures. In Wolf v. Colorado, the United States Supreme Court stated that it would not require the individual states to adopt the Exclusionary Rule so long as they do not sanction unreasonable searches and seizures but instead provide a remedy for such violations. In Wolf v. Colorado the Supreme Court pointed out that if a state provided the right to sue in a civil court for trespass, then such a state was not sanctioning a violation

of the right to be free from unreasonable searches and seizures.

The law proposed above would add to this traditional common law remedy and thus go beyond the minimum safeguards called for in Wolf v. Colorado.

4. Proposed Legislation with Reference to the Sale of Heroin and Marijuana

The Legislature hereby expresses the policy of the people of the State of California to be that, except in unusual cases where the interest of justice deems a departure from the declared policy, no judge shall grant probation to any person who shall have been convicted of a violation of Section 11501, Health and Safety Code, Section 11502, Health and Safety Code, Section 11531, Health and Safety Code and Section 11532, Health and Safety Code, nor shall the execution of the sentence imposed upon such person be suspended by the court.

The existence of such unusual facts or circumstances which call for a deviation from the declared policy of the people of the State of California against probation shall be spread upon the minutes of the court in detail.

(Note: The above amendment may be added to each of the sections set forth and/or to Section 11715.6, Health and Safety Code.)

Much criticism has been directed to the Los Angeles Superior Courts because narcotic peddlers have received probation or county jail sentences. The judges in question defend themselves by saying that the defendants whom they sentenced to the county jail or placed on probation were very young, or were not peddling, but sharing a single marijuana cigarette, and further that punishment must fit the individual and not the crime.

Unfortunately, the reasons which motivate a judge to sentence an individual narcotic peddler to the county jail or to place him on probation do not appear in the official court minutes, nor is a judge presently required to state his reasons so that the court reporter may write them

down. The policy statement suggested would require the judge to give his reasons in detail. This requirement would protect the court from unjustified criticism while at the same time make the judge consider carefully the reasons why he should grant leniency in exceptional cases.

Similar language to that suggested herein can be found in Penal Code section 1203 wherein the legislature has expressed a policy against probation in cases involving certain enumerated crimes. Narcotics laws are not presently included in this section.

5. Proposed Change with Reference to Minimum Time for Eligibility for Parole

§3049. (Minimum imprisonment in other cases: Limitations on rule: Parole after service of minimum term.) In all other cases not heretofore provided for, no prisoner may be paroled until he has served the minimum term of imprisonment provided by law for the offense of which he was convicted, except that in cases where the prisoner was serving a sentence on December 31, 1947, and in which the minimum term of imprisonment is more than one year, he may be paroled at any time after the expiration of one-half of the minimum term, with benefit of credits, but in no case shall he be paroled until he has served one calendar year; provided, that any prisoner, received on or after January 1, 1948, at any state prison or institution under the jurisdiction of the Director of Corrections, whose minimum term of imprisonment is more than one year, may be paroled at any time after the expiration of one-third of the minimum term, except that no prisoner convicted of a violation of Section 11501 of the Health and Safety Code, Section 11502 of the Health and Safety Code, Section 11501 of the Health and Safety Code and Section 11502 of the Health and Safety Code may be paroled until after he has served the minimum term prescribed by law. In all other cases he may be paroled at any time after he has served the minimum term prescribed by law. (Added by State, 1941, ch. 106, § 15, Am. Stats. 1947, ch. 1331, § 6; Stats. 1949, ch. 555, § 1.)

See note to § 2926.
(New matter underlined)

Much criticism has been directed at the Adult Authority for the early release to parole of prisoners convicted of narcotic offenses. These persons according to statistics from the Department of Corrections have the worst record for recidivism (2/3's of the persons convicted for narcotic law violations return to prison as opposed to 1/2 of the parolees convicted of non-narcotic violations).

One of the criticisms stems from the fact that under our present law a person sentenced for a term of five years to life is eligible for parole after serving only twenty months rather than after serving the minimum time set forth in the statute (five years). To the layman and to most lawyers and judges who do not practice criminal law, it comes as quite a shock to learn that five years means twenty months, not sixty months.

By changing the law regarding eligibility for parole so that a person convicted of the sale of narcotics would not be eligible for parole until he had served the minimum time prescribed by law, the legislature could insure that a narcotics peddler would serve sixty months rather than twenty and thereby triple the number of months to be served as a minimum before eligibility to parole. Such a change as discussed herein, would increase the actual time served without changing the present penalty provisions.

6. **Alternative Suggested Change with Reference to Parole of Narcotics Law Violators**

The Legislature hereby expresses the policy of the people of the

State of California to be that, except in unusual cases where the interest of justice deems a departure from the declared policy, no prisoner, received on or after January 1, 1962, convicted of a violation of Section 11501, Health and Safety Code, Section 11502, Health and Safety Code, Section 11531, Health and Safety Code, and Section 11532, Health and Safety Code shall be paroled until after such prisoner shall have served the minimum term prescribed by law.

The existence of such unusual facts or circumstances which call for a deviation from the declared policy of the people of the State of California against parole for violation of the above offenses until the minimum term prescribed by law shall have been served, shall be determined by no less than _____ members of the Adult Authority.

This suggested change also goes to the problem referred to above concerning the eligibility for parole for persons convicted of narcotics law violations. This suggested change merely declares a policy of the people of the state against eligibility for parole until the minimum time has been served except under unusual circumstances. It further would require such unusual circumstances to be determined to exist by a minimum number of the members of the Adult Authority. Under present procedures of the Adult Authority, only two members of the Adult Authority are required to approve the parole of a prisoner.

Respectfully,



Arthur L. Alarcon
Project Director

ALA:cg

1. To recommend a simplification of search warrant procedures and paper work similar to the methods employed in San Diego including the use of affidavit forms which can be filled out in longhand by the officer to avoid delay and eliminate the need to go to the District Attorney's office.

2. To recommend the enactment of legislation which would modify the Exclusionary Rule to permit the use in evidence of property taken pursuant to a search warrant although the property so taken is not the same as described in the warrant, or that there is no probable cause for believing the existence of the grounds on which the warrant was issued. It should be noted that the filing of a false affidavit to secure a search warrant is perjury and is a felony under Penal Code sections 118 and 142. Further, Penal Code section 1533 should be amended to permit nighttime serving of search warrants based on probable cause.

3. To recommend legislation amending Penal Code section 3049 to provide that no prisoner convicted of a violation of Health and Safety Code sections 11500, 11501, 11502, 11530, 11531 and 11532 shall be paroled until after he has served the minimum term prescribed by law. In other words such prisoners must serve the full maximum term and shall not be eligible for parole after the expiration of one-third of the minimum term as under our present laws.

4. To recommend legislation increasing the punishment for a violation of Health and Safety Code section 11500 (Possession of Heroin) to 2 to 10 years, and to increase the punishment for a violation of this same section (Possession of Heroin) with a prior conviction of a narcotics offense to 4 to 20 years to conform to the Adult Authority Guide adopted April 29, 1960, based upon the Adult Authority's broad experience and study of the proper period of incarceration for this offense.

5. To recommend that all District Attorneys cooperate with the Adult Authority by sending in replies to requests by the Adult Authority for recommendations regarding the disposition of parole hearings. The practice in some counties is to ignore the notice of parole hearings. Other counties recommend a denial of parole in every case.

6. To recommend that the District Attorney prepare a special report for the use of the court and the probation department relative to the defendant's prior record, the full extent and nature of his criminal involvement, the existence of other crimes or charges against the defendant, and any other information which might assist the court in making a just disposition of the case. Further, to recommend that the probation department should actively seek out information from the arresting agency as to the true nature of the defendant's criminal involvement.

Magistrate
between
dept and
law enforcement
officer -

7. To recommend active participation by the District Attorney in probation and sentence hearings where the probation report is in error or does not fully and accurately state all the facts concerning the defendant's background and criminal involvement. Also the District Attorney should speak out to rebut erroneous statements by a defendant or his attorney.

8. To recommend that no distinction should be made in the sentencing or paroling of persons convicted of the sale of narcotics on the basis that such person is an addict or a nonaddict. To further recommend legislation calling for state prison sentences for all narcotics peddlers whether addicted or nonaddicted.

9. To recommend the enactment of legislation to permit any law enforcement officer to inspect a vehicle for contraband in exchange for the privilege to operate a vehicle, based on the theory that while a man's home may be his castle, his automobile is not, and on the further grounds that the automobile is an instrument, in the hands of a dope peddler, for the commission of the crime of illegally transporting narcotics.

10. To recommend increased cooperation by the State of California through the Bureau of Narcotics Enforcement with Mexican authorities to curb the illegal traffic in narcotics across our common border by exchanging information concerning narcotics activities.

11. To recommend an increased appropriation for the State Bureau of Narcotics Enforcement in an amount not less than \$100,000 for the obtaining and purchase of evidence and for the compensation of undercover operators.

12. To recommend that the Governor and the legislature urge Congress to pass legislation similar to the bill introduced by Congressman Victor Infuso and Senator Jacob Javitz providing for grants-in-aid for states having a hospital for the treatment of narcotics addicts. To recommend the enactment of legislation to create a pilot state narcotics hospital with research facilities and with follow-up mandatory supervision and control.

13. To recommend the enactment of federal legislation setting up mandatory supervision and control for an extended period of all addicts after their release from the federal narcotics hospitals (at Lexington and Fort Worth) as a condition for the acceptance of such persons for treatment.

14. To recommend the enactment of legislation appropriating sufficient funds so that a suitable state agency such as the Attorney General's Office or the Judicial Council may prepare and distribute without cost a weekly digest of all appellate Decisions dealing with narcotics cases and involving the Exclusionary Rule to all judges in California so that they may have quick, accessible reference material in this important field and to foster conformity in the rulings of the trial courts with these decisions.

15. To ask the Governor to declare 1961 as "FIGHT NARCOTICS YEAR" and to enlist the aid of all civic, fraternal, religious and service organizations in a massive state-wide campaign of education for the prevention and control of narcotics and addiction.